# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 169

THE UNITED STATES, APPELLANT,

vs.

PRINCE LINE, LIMITED, PAUL F. GERHARD, CHARLES Z. GERHARD, FRANCIS J. ZIMMERMAN ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

## RECORD: VOLUME 3.

TESTIMONY OF WITNESSES FOR THE PETITIONER.

FILED JUNE 14, 1916.

# United States District Court,

SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,

*Petitioner,*

*against*

PRINCE LINE, LIMITED, and OTHERS,

*Defendants.*

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## RECORD—VOLUME 3

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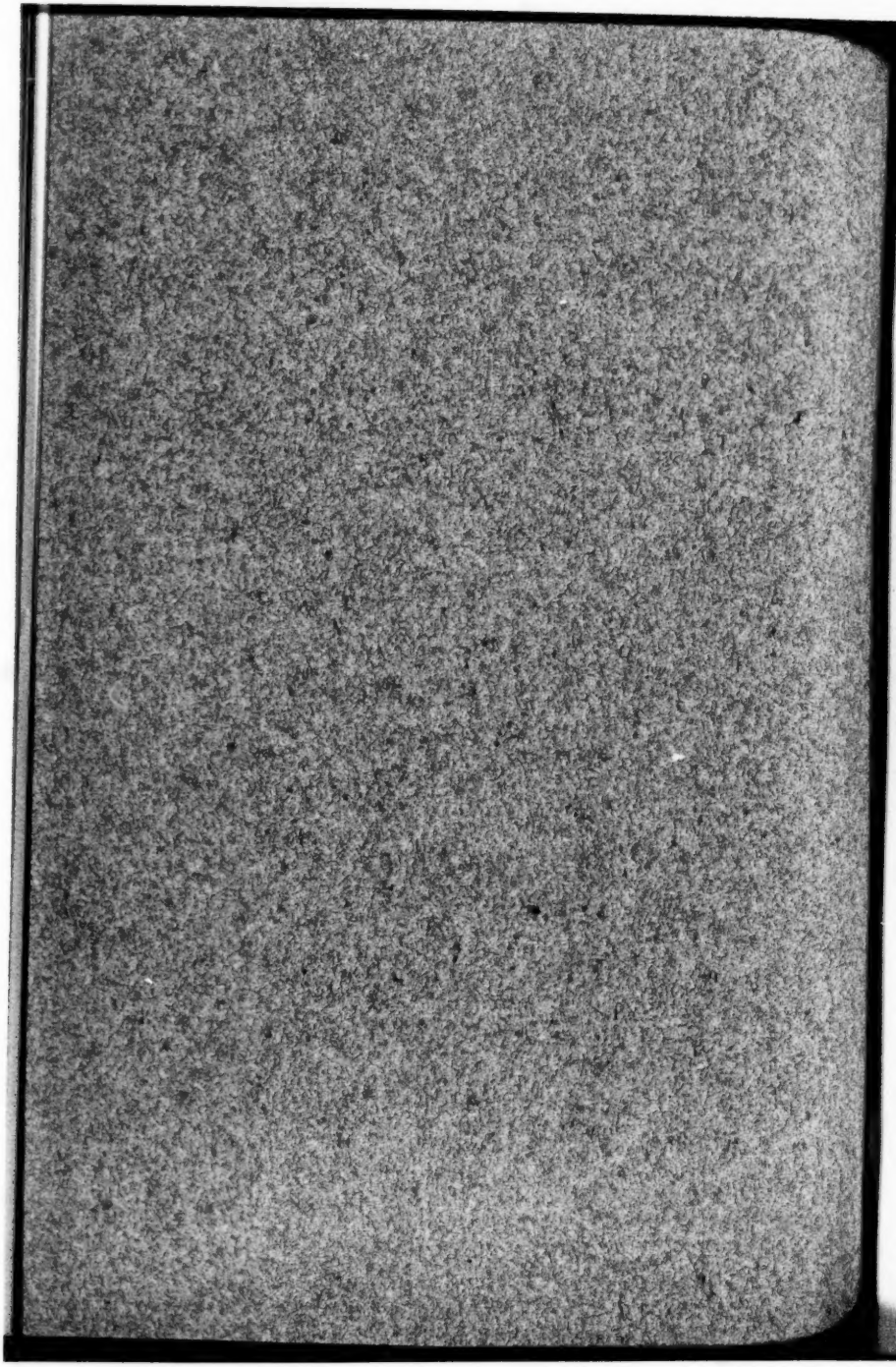
**Testimony of Witnesses for the Petitioner.**



UNITED STATES OF AMERICA

v.

PRINCE LINE, LIMITED, ET AL.

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Testimony of Witnesses for the Petitioner.

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Q. Then the German Line and you both have the 10th 3289
now? A. Yes, I think you find it so advertised. I haven't it in mind, but we try to keep our dates.

Q. Doesn't that arrangement result in having two boats on the berth at the same time? A. It is a little unfortunate, yes; it don't work exactly right.

Recess until two thirty o'clock.

AFTERNOON SESSION.

3290

CLEMENT H. BETTS, sworn and called on behalf of the petitioner, testified as follows:

DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Betts, where do you reside? A. In East Orange.

Q. New Jersey? A. Yes.

Q. What is your business? A. I am freight manager for Funch, Edye & Company.

Q. Who are agents for whom, or for what? A. A number of steamship lines; among others the Hamburg-American and Hamburg-South American and Hamburg joint 3291
service to Brazil.

Q. What other steamship lines do they represent? A. Do I personally?

Q. No, Funch, Edye & Company? A. The United States and China, Japan Line to the Far East, the Hansa Lines to the East Indies and British India; the United-Tyser Line for Australia, the Holland-America Line, Scandinavian-American Line, Royal-Dutch West Indies Line.

Q. They are steamship agents? A. Steamship agents 3292
and brokers

Q. And your position is that of freight agent? A. I am manager of the Brazil department.

Q. Does that include passengers as well as freight? A. No passenger.

Q. How long have you held that position? A. Since 1908.

Q. Where were you employed in 1907? A. I was with Funch, Edye & Company, but managing another department.

Q. How long had you been with Funch, Edye & Company prior to the conference? A. Prior to what?

3293 Q. Prior to 1908; how long had you been with Funch, Edye & Company? A. About 5 years.

Q. How long had they been the agents for the German Lines, the Hamburg-American and Hamburg-South American; how long had they been agents for it? A. Ever since the lines took over that trade.

Q. Do you know the year? A. I do not.

Q. Sometime in the latter part of 1907, wasn't it? A. Well, the Sloman Line operated previously and I do not recall what date the Hamburg Lines took them over.

3294 Q. Now, prior to the time that the Hamburg Lines took over the Sloman Line was Funch, Edye & Company the general agents for the Sloman Line here? A. Yes.

Q. And the Sloman Line was engaged in this Brazil trade? A, Yes.

Q. And operated a number of vessels? A. I cannot tell you anything about them of my own knowledge, because I had nothing to do with that particular department.

Q. What department were you connected with at that time, during the Sloman Lines's existence? A. What year was that?

3295 Q. Take two or three years before the Sloman Line was taken over by the German Lines? A. I could not tell you right now whether it was Australia or the Far East, either one or the other.

Q. It had nothing to do with the Brazil business? A. Nothing to do with it.

Q. Now, Mr. Betts, I show you a copy of a contract dated January 11th, 1909, purporting to be executed by you for Funch, Edye & Company, as agents for the Hamburg-South American Line and Hamburg-American Line joint

3296 service, with the Singer Manufacturing Company; you can look at it and state whether you remember it? A. (After examination.) I made that contract.

Q. Now, you will notice that after the words Messrs. Funch, Edye & Company are "Or their associates," that occurs there; the words "Or their associates," who is meant by their associates? A. The lines associated with them.

Q. Which lines? A. The Lamport & Holt Line and the Prince Line.

Q. You mean the lines engaged in this conference? A. Yes.

Q. And when the words "Or their associates" are used 3297
in this contract they refer to those two other lines besides the Hamburg and the Hamburg-South American—wherever the words "Or their associates" are used they refer to them don't they? A. Yes.

Q. Now, there is a provision here that indicates that Mr. Hughes is to have the privilege of making shipments by other lines; what other lines are meant there? A. It is a little difficult to answer these questions unless I have the paper. (After re-examination of paper.) Well, they gave the shipper the opportunity of placing his freight by any 3298
other route in the event of Funch, Edye & Company, or their associates, not having a steamer in position to meet the requirements of the Singer Manufacturing Company. That is to say, if they had an order which required immediate shipment, and the associated lines had no such opportunity, then the Singer Manufacturing Company could avail themselves of any other method of transportation that they might desire.

MR. BALDWIN: I offer this contract in evidence. Marked Petitioner's Exhibit 218. 3299

Q. Did you negotiate with the Singer Company this contract? A. Yes, sir.

Q. And all the conversations leading up to it were between you and Mr. Hughes of the Singer Company? A. No, I would not say they all were, because we have a soliciting man who frequently starts these negotiations.

Q. The interpretation that you put on the words "The other lines," meaning that the Singer Company should have the privilege of providing that if either your lines or the Lamport & Holt Line or the Prince Line did not 3300
have vessels here, then it was to their interest—they then could ship over other lines? A. Yes, sir.

Q. But they would have to first obtain your consent? A. Certainly.

Q. In other words, that you wanted to be sure how much they wanted to ship and then ascertain whether or not the conference lines had space for them; that is what it means, doesn't it? A. Well, either the space or a sailing.

Q. The rate just quoted here was made in consideration of all their shipments going over these conference lines as long as you could provide sailings or space? A. Yes.

3301 Q. That in no event if you did have that could they ship over any other line as long as that contract was in force? A. No.

Q. Was this the first contract that you made with the Singer Company? A. What is the date of it?

Q. January 11th, 1909? A. I believe it is.

Q. Do you know who started the negotiations for that contract? A. I probably did.

Q. Do you remember whom you saw in the first instance, whether Mr. Hughes or who? A. Mr. Hughes.

3302 Q. Which Mr. Hughes, father or son? A. Senior.

Q. Had the rates here been arrived at and agreed upon before the contract was signed? A. Oh, yes.

Q. And where was the authority for those rates obtained? A. I cannot recall, but I imagine it was—we submitted the proposition to Hamburg. I would not like to definitely testify, but that is our usual procedure on all contract matters.

Q. Wasn't this matter all gone over in New York conference here before the rates were determined upon? A. No, I don't think so.

3303 Q. The rates were finally determined on in conference here, weren't they? A. I don't think so.

Q. Do you mean to say that the rates here were not discussed and agreed upon by the agents here before the authority was obtained? A. I don't remember that they were, but as it was for South Brazil, I do not think it is likely that they were. I could not recall now whether they were or not; that is a South Brazil contract.

Q. Were you accustomed to attend the conference meetings here? A. Always.

3304 Q. Do you mean to say that the rates of a South Brazil port was not discussed or fixed or arranged for in conference here or abroad right along? A. The other lines have not got the same interest in the South Brazil trade that the Hamburg Lines have, and whether at that time we consulted about South Brazil rates or not, I don't know. We informed the other lines of the rates, but I do not think that they were discussed here until after the contract was made. That is my recollection; I may be wrong about it.

Q. Just refresh your recollection. The contract made provision for the shipments to go either over your line or the other conference lines, and to these very South Brazil ports. Now, taking that into consideration, doesn't it re-

fresh your recollection so that you can state whether, before 3305
entering the contract formally that you must have discussed it and arranged for it in order to bind them to it? A. At that time the Prince Line was calling at South Brazil ports; the Lamport & Holt Line only handled South Brazil ports by transshipment, and I believe that they agreed to any rates that we agreed to for South Brazil.

Q. In other words, that they had given you authority in advance to make contracts for rates that were satisfactory to you and bind them, is that what you mean? A. I could not definitely say about that without looking up the 3306
records in the office. I believe those ports are all south of Santos, aren't they?

Q. Rates to Rio Grande do Sul and other south ports, I suppose they are all south ports. Then your recollection is that before quoting that rate to the Singer Company that you got the authority from your home office in Hamburg? A. I believe so.

Q. Were not these contracts all entered up in paragraphs in the minute book whenever they were made, of the New York conference? A. I guess you know more than I do; you have all the records and I have not looked them up. 3307

Q. What is your recollection about it; you must have some? A. I don't think so; not for South Brazil; it is a matter of record, and I believe you have the record. You can tell better than I can, because I have not looked them up.

Q. I am simply asking your recollection; I have not gone through the books, through each particular paragraph? A. It is not the custom now, and I don't remember what it was four or five years ago. We do not record the South Brazil contracts and whether we did four or five years ago, 3308
I don't remember.

Q. I show you a copy of contract dated October 12, 1909, Exhibit 173, purporting to be executed by you for Funch, Edye & Company as agents for these two German Lines, and ask you whether or not you made that contract with the Singer Manufacturing Company? A. (After examining paper.) I did.

Q. Where was the authority obtained for making the rates here of sixteen cents net, per cubic foot, by the German Lines, and sixteen cents by the Lamport & Holt Line, the latter having an option of charging ten per cent. primage? A. By cable authority, I believe.

3309 Q. From the London conference? A. Yes.

Q. This purports to be made for the account of the German Lines as well as the Prince Line and the Lamport & Holt Line? A. Yes.

Q. Now, the rate which you quoted there to the Singer Manufacturing Company was also conditioned upon their confining their shipments to your line? A. Yes, sir.

Q. I mean these conference lines? A. Provided we could give them the requisite sailings.

Q. That is to say, an option for the Singer Company to
3310 ship by other lines providing that the three lines, that is all the conference lines, did not have suitable departures? A. That is it.

Q. But where you had sufficient departures, then they were to confine their shipments of this freight to your line? A. Absolutely.

Q. Do you remember whether this contract was entered upon the minutes—this applies to North Brazil? A. I believe it was, yes.

Q. I show you a copy of a contract under date of December 16th, 1910, purporting to be executed by you in behalf
3311 of the German Lines, and for the benefit of the Lamport & Holt and Prince Line as well, with the Singer Manufacturing Company, Exhibit 150; you made that contract, did you? A. I made this contract.

Q. Turn to the part with the words "The other lines"; does that mean lines outside of the conference, providing the conference lines had not sufficient departures? A. There was a provision here for Cabedello, Maceio and Victoria; that was the exemption.

Q. It says here "Shippers to have the option of ship-
3312 ping by other lines to the Ports of Cabedello, Maceio and Victoria, should none of the above mentioned lines have a departure in position to meet the requirements of the shipper." A. That was a facility given to the shippers because they are rather small ports. We might not have a steamer in position to suit their requirements, and if they had a rush order, why we would let them avail themselves of any other opportunity that they could find.

Q. That is provided that you could not supply the boats? A. Provided we had not steamers in position.

Q. The rate quoted here, "18c per cubic foot landed for the ports named and for Rio de Janeiro, plus the additional

charge of $1.80 for 40 cubic feet," and so forth; that was 3313
also conditioned upon their confining for this period their shipments to the conference lines? A. Yes, sir.

Q. Providing, of course, after those other ports named that you should have sufficient vessels? A. We guaranteed to provide them with tonnage to carry all their shipments to the regular ports, and in exchange for our guarantee to provide them with tonnage and take care of whatever tonnage they may offer us, they guaranteed to give us all their business. A reciprocal agreement entirely.

Q. And the rate was part of the condition, of course? 3314
A. The rate is part of it. We are under obligation to furnish them with room and they have, I think, twenty days' notice, and if they declare two tons or two thousand tons we have got to take care of it.

Q. Where was the rate fixed for that? A. It was by negotiation and by cable authority. That is to say—

Q. You mean cable authority with the London conference or from the London conference? A. From the London conference. We got the best offers we could from the shippers and submitted them through the London conference, who authorized the acceptance of them. 3315

Q. And the matter was discussed and finally made a part of the minutes of the New York conference, wasn't it? A. I believe so.

Q. Do you know whether or not, Mr. Betts, that this contract which you have just identified—Mr. Daniels of Busk & Daniels claimed that it contravened the Lamport & Holt contract of December 12, 1908? A. There was some little question about it, yes.

Q. For shipments to Santos and Rio? A. Yes; there was some question about it. 3316

Q. And discussed in the New York conference, was it not? A. Mr. Daniels made some remark about it, yes.

Q. After Mr. Daniels had brought up the question in the New York conference, do you know whether it was reported back to your principals abroad, the position that he took? A. I do not believe we made any special reference to it. The minutes of the meeting which I believe you have give the whole history of it, and really there was no more comment necessary. You have before you a copy of an authority which was signed by the various agents which authorized Funch, Edye——

3317 Q. I did not ask you that; I asked you whether or not it was reported back to the London conference? A. Not to the London conference. Each individual agent here may have reported it to his principal.

Q. Did you report to yours? A. We do not communicate direct with Hamburg. We communicate to the Hamburg-American Line on Broadway, and I don't know whether they did or not. The minutes are self-evident.

Q. Mr. Betts, prior to the execution of this contract, Exhibit 160, for Rio and Santos, the Lamport & Holt Line
3318 through Busk & Daniels had a contract with the Singer Manufacturing Company for Rio and Santos, didn't they? A. They did, yes.

Q. And contract Exhibit 160 is the first contract for those ports which Funch, Edye & Company representing the Hamburg Line made, isn't it? A. Yes.

Q. And assume it was made, or assume that it was brought to the attention of the New York conference, Mr. Daniels representing Busk & Daniels made a protest against it, didn't he? A. He did.

3319 Q. And because, as he claimed, that they had the exclusive right to serve the Singer Company to those two ports? A. Something like that, yes.

Q. And he registered this protest, did he not, in the minutes of the New York conference? A. Very vigorously, yes.

Q. I show you pages 82 and 83 of the minutes of the New York conference, paragraph 1117; will you look at it and state whether or not those are the minutes in which he stated his position? A. (After reading minutes.) Yes,
3320 that was the protest.

MR. BALDWIN: I offer this in evidence.

Marked Petitioner's Exhibit 219.

Q. Mr. Daniels claimed that the first knowledge he had of it was after you had executed the contract, didn't he? A. I don't know what he claimed.

Q. Didn't he claim that this practically cancelled the contracts that the Lamport & Holt Line had for those ports with the Singer Company, and that his line in no wise authorized such cancellation? A. That was his argument, but that was disproved in our argument.

Q. I am not asking what he claimed; he urged that, didn't 3321
he? A. That is what he claimed, but he was wrong.

Q. After this meeting of the conference, when he made his protest, did you have a conversation with Mr. Hughes about it? A. I did.

Q. And did Mr. Hughes state to you, among other things, that Daniels had claimed that his contract was still in force and that you had no right to make a contract by which his Lamport & Holt contract with the Singer Company was in any way terminated? A. As far as I recollect Mr. Hughes was perfectly satisfied with the trade he made with me and 3322
stood on his signature.

Q. That is not what I asked you. Now, you state his conclusion; I am asking you what he stated? A. I don't remember it.

Q. In any event did he ask if you had authority to make the contract for those ports? A. Yes, he did.

Q. What did you say to him? A. Yes, we guaranteed our authority.

Q. Do you know whether or not the substance of the Lamport & Holt protest was in any way determined by the 3323
London conference and communicated to you here? A. I don't think so.

Q. Now, isn't it a matter of fact that they declined to uphold the position of Mr. Daniels and that you were authorized to go and make this contract at this rate for those ports? A. No, because the contract was made and signed when it was handed in to the conference.

Q. Did they confirm it? A. It did not matter whether they confirmed it or not; it was made over our signature.

Q. That is not the question. Didn't they afterwards con- 3324
firm, whether it was made and binding between you and the Singer Company—— A. I don't know whether it was ever mutually agreed on the other side. I never heard anything more about it.

Q. Subsequent to your conversation with Mr. Hughes did you follow it up with a letter and is this the letter of January 19th, 1911? A. Mr. Hughes called upon us and we gave him the letter you refer to.

MR. BALDWIN: I offer that letter in evidence.
Marked Petitioner's Exhibit 220.

Q. He asked for this letter as he wanted it in writing

3325 that you had authority to make that contract, is that right? A. I believe so.

Q. You will notice that this letter states that on December 21st, 1910, a full record of the matter was sent to all the principals; you recall that, don't you? A. Yes, sir.

Q. Now, do you mean the principals here or the principals abroad? A. I do not recall.

Q. The contracts that the German Lines had with the Singer Company prior to this Exhibit 760 did not cover the Santos and the Rio trade, did it? A. It did not.

3326 Q. And because of that you had seen Mr. Hughes to see if you could not get a slice of that business? A. No, on the contrary, we were authorized to amend the contracts. That is to say, there were two contracts, there was the Lamport & Holt's contract for Rio and Santos, and the other Mid-Brazil ports which we held, and we were authorized by a slip signed by all the agents to amend those contracts.

Q. All of them? A. Yes.

Q. Go ahead? A. And we did.

Q. You say by all the agents; had Lamport & Holt authorized you to amend the contract which they had with

3327 Santos and Rio? A. Yes.

Q. Then if that is true, how do you account for the position taken by the— A. As I said before, Mr. Daniels was mistaken.

Q. According to the minutes, paragraph 1117, with reference to this, it would seem that Mr. Daniels stated, among other things, the Lamport & Holt agents had neither seen nor heard of the present contract until now presented at this meeting? A. That was quite correct. Lamport & Holt's agents had authorized the amendment of all

3328 contracts.

Q. What one of their agents; it was not Mr. Daniels personally, was it? A. I guess so; but you have the original slip on file. I could not tell you; I only have a copy of it. Probably signed in his own handwriting.

MR. SPOONER: What is the date of it?

THE WITNESS: It is dated on December 7th, 1910, in our scrap book. You will probably find it in his own writing. I am sure the very slip that I at that time had was also in his own handwriting. You have the book of slips. That is probably a different book altogether that you have there. It is in his own handwriting and that was the authority.

Q. Then it was in pursuance to conference authority that 3329
you do amend all the present Singer contracts that you went to see Mr. Hughes to get the contract for Santos and Rio? A. Yes, it was.

Q. Is the entry appearing as to refusals of Brazil service of the date 7th of December, 1910, the minute that you refer to, Mr. Betts? A. Yes.

MR. BALDWIN: I will read it into the record. (Reading) " F. E. & Company"—I suppose that means Funch, Edye & Company?

THE WITNESS: Yes. 3330

MR. BALDWIN: (Reading continued.) "Are authorized to amend present contracts with the Singer Manufacturing Company on the basis of Perno"—does that mean Pernambuco?

THE WITNESS: Yes, sir.

MR. BALDWIN: (Continuing reading.) "Bahia, Cabedello, Maceio and Victoria, 21c per cubic foot landed; Rio de Janeiro, 18c per cubic foot landed, plus $1.80 returnable if steamers discharge on new wharf and certificate of same presented. Santos 3331
18c."

Q. Mr. Betts, I show you a letter executed by yourself for Funch, Edye & Company to C. M. Hughes, traffic manager of the Singer Manufacturing Company; did you sign that letter? A. Yes, sir.

MR. BALDWIN: I offer this in evidence.

Marked Petitioner's Exhibit 221.

Q. This Exhibit 221 just received in evidence while in 3332
the form of a letter really operated as a contract between you in extending the rates mentioned therein, did it not? You did not enter into any formal contract for the advance of rates other than this letter? A. I believe a contract was drawn up on that basis.

Q. You are not at all sure about it, are you? A. Is that letter signed?

Q. Signed by Funch, Edye & Company, but not by the Singer Company? A. Then there was a formal contract drawn up. What was the date of that?

Q. February 29th, 1912? A. Oh, yes, there a contract was drawn up.

3333 Q. Were those rates agreed upon? A. I believe so.

Q. This is really with the exception of the rates themselves, an extension of the 1911 contract, wasn't it, for those ports? A. Yes, but I believe a new contract was drawn up.

Q. In the 1911 contract, Mr. Betts, the rate to Cabedello was 18c per cubic foot landed, and the rate set forth in this letter of February 29th, 1912, Exhibit 221, shows Cabedello 31½c, plus eight cents per freight ton. Just how does that rate of 31½c plus eight cents compare with
3334 the rate of 18c per cubic foot landed to that port? Is it an increase, and if so, how much? A. It looks like a considerable incerase. Cabedello is a very small port and very little cargo goes there and a very hard port to serve. The 18c was entirely too low.

Q. In any event it was an increase, a considerable increase? A. Yes.

Q. And it states here with reference to these proposed increases the rates are considerably lower than from Europe; it means to those ports mentioned in the letter, doesn't it? A. Yes, sir.

3335 Q. In this proposed advance of rates the rate is 24 cents to Bahia, and under the 1911 contract was 18 cents? A. Yes, sir.

Q. And the rate to Pernambuco in this letter of February 29th is 21 cents and under the 1911 contract is 18 cents; then the rate to Maceio first appears 24 cents and that appears to be stricken out and then the figures 27, is that right; it was increased to 27? A. I could not tell you without referring to the contract.

Q. The rate originally in the 1911 contract was 18 cents
3336 and to Victoria in 1911 it was 18 and under this new dispensation 24, and Santos was 18 under the 1911 contract and is 18 under this new proposition; Rio de Janeiro was also 18 in both, excepting that in the letter there is an additional charge of 4½ cents as mentioned in the existing contract. I suppose that has to do with the landing at the new dock? A. Well, about 90 per cent. of the goods go to Rio and Santos. The odd ports such as Cabedello and Maceio and Bahia are very small.

Q. Now, that advance in these rates as suggested by this letter you say was finally agreed upon in a formal contract? A. I would like to look that up and let you know to-morrow, Mr. Baldwin; I cannot be sure of that.

Q. In any event it was suggested by the London confer- 3337
ence, wasn't it? A. Yes.

Q. And have you compared the rates suggested in this letter with rates obtaining from Europe at that time to know whether they are the same? A. We take our principals' word for it.

Q. You have not made any comparison yourself to know that? A. No, sir.

Q. Mr. Betts, are you able to state what the printed tariff rates were on sewing machines in the years 1908, 1909, 1910 and 1911 and 1912 to shippers who were not under con- 3338
tract with the conference lines to the ports of Pelotas, Port Alegre, San Francisco do Sul, Paranagua, Rio Grande do Sul, Cabedello, Pernambuco, Maceio, Bahia, Victoria, Natal, Rio and Santos, have you? A. I have the tariff rates.

Q. For each of those years? A. Yes.

Q. Have you got them made up in any tabulated form? A. Yes.

Q. Will you let me have them? A. (Producing papers.) There is, of course, only one large shipper of sewing ma- 3339
chines. If there had been any other large shipper of sewing machines, he would have had exactly the same rates.

Q. I did not ask for that, Mr. Betts. A. I know, but I would like to say that, Mr. Baldwin.

Q. You need not say it. I am entitled to a responsive answer. You are well represented here by counsel.

MR. BALDWIN: I ask to have that part of the testimony stricken out as not responsive to my question.

I offer the tariff rates made up by the witness 3340
and I will read it right into the record.

| "TARIFF RATES | 1908 | 1909 | 1910 | 1911 | 1912 | |
|---|---|---|---|---|---|---|
| | , | End of Aug., Sept. on | | | | |
| Rio Grande do Sul | 26¢ | 26¢ | 26¢ | 26¢ | 32¢ | 29¢ |
| Pelotas | 35¢ | 35¢ | 35¢ | 35¢ | 38¢ | 35¢ |
| Porto Alegre | 38¢ | 38¢ | 38¢ | 38¢ | 44¢ | 41¢ |
| San Francisco do Sul | 28¢ | 28¢ | 28¢ | 28¢ | 27½¢ | 24½¢ |
| Paranagua | 28¢ | 28¢ | 28¢ | 28¢ | 27½¢ | 24½¢ |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 3341 | Pernambuco | 21¢ | 21¢ | 21¢ | 21¢ | 26¢ | 21¢ |
| | Maceio | 21¢ | 21¢ | 21¢ | 21¢ | 33¢ | 27¢ |
| | Bahia | 25½¢ | 25½¢ | 25½¢ | 25½¢ | 32¢ | 24¢ |
| | Victoria | 25½¢ | 25½¢ | 25½¢ | 25½¢ | 27½¢ | 22½¢ |
| | Natal | 23¢ | 23¢ | 23¢ | 23¢ | —— | —— |
| | Rio de Janeiro | 21¢ | 21¢ | 21¢ | 21¢ | 23¢ | 18¢ |
| | Santos | 21¢ | 21¢ | 21¢ | 21¢ | 23¢ | 21¢" |

Q. Mr. Betts, I show you Exhibit 1, which is the printed tariff for shipments from July 1st, 1904, New York to Brazil? A. Yes.

3342 Q. And ask you whether the printed tariff rates therein appearing and such of those, or of the amendments, as are made either in writing or printed in, or slips, remained in force down until 1912? A. Yes. I believe so. All the rates were subject to change or modification at any time.

Q. There were modifications and changes at various times, weren't there? A. Frequently.

Q. Now, I show you Exhibit 2 for identification, which purports to be a statement of certain changes to the South Brazil ports, giving the articles and the rates, and ask you

3343 whether or not they are correct in as far as they show the amendments from the printed tariff which you have just identified? A. These are some of many changes. I don't think that they represent all the changes that were made in that published tariff.

Q. Do your records show the changes in rates from 1904 down to the present time? A. No, sir.

Q. They would not? A. No.

Q. Wouldn't they from 1908 down? A. No, sir. You have handed me a number of changes here and I am sure

3344 these are not complete.

Q. We admit it, and we won't go into that any further? A. There are so many changes; rates fluctuated so constantly that we did not keep a complete list of them.

Q. Is there any place where that information can be obtained? A. No, sir, there is not.

Hearing adjourned to Tuesday, May 27th, 1913 at 10:30 o'clock A. M.

New York, May 27, 1913. 3345

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles Burlingham, Esq., and Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*

MESSRS. CONVERS & KIRLIN; by J. Parker Kirlin, Esq., and M. W. Maclay, Jr., Esq., for Prince Line, *et al.* 3346

MESSRS. SPOONER & COTTON; by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

CLEMENT H. BETTS, recalled.

DIRECT-EXAMINATION continued by Mr. Baldwin:

Q. Mr. Betts, I suppose that you had with you a printed tariff similar to this Exhibit 1, did you not?

MR. SPOONER: When was this?

3347

Q. I mean generally up to 1912? A. For general use, yes.

Q. When the shipper would make application for rates would he come directly to you, or whom would he go to in your office, assuming he should go to Funch, Edye & Company? A. He would go principally to me, yes.

Q. Then you, of course, would rely on the printed tariff in quoting the rates? A. Yes.

Q. What would be your procedure if the shipper wanted to make a time contract? A. We never made contracts more than three months ahead except by special 3348 arrangement.

Q. Well, we will say time contracts then for three months, what would be your procedure? A. Well, if he offers tariff rates we would make a contract with him.

Q. And you would make a contract covering the other two lines too by which he could ship by the other lines? A. Usually on a three months contract, but not always.

Q. If you made that contract and it was at the listed rate or printed rate you would report to the New York conference after you made it? A. Yes.

Q. And under what conditions would you make a contract

3349 where it was not made for the benefit of your other conferees? A. Well, the shipper might desire to ship by our line for some reason of his own, possibly because of the date of sailing or——

Q. I am now speaking of time contracts? A. No, because of the time. Our sailings were usually on the tenth of the month. The shipper might make a contract for the first half of the month, but for the three months ahead, and might make a contract with the Prince Line for the last half of the month. Contracts were made to suit the
3350 shipper's convenience.

Q. Now, if he made an offer as to rates which was less than your established tariff rate, then what would you do? A. Well, I would first of all see what his reason was for asking the lower rate. If his reason seemed a good one and the business seemed profitable, it would be submitted by a conference cable to the other side.

Q. Direct? A. No, through the usual channels; the secretary would send a cable off.

Q. You mean to say you would first put it up to the New York conference? A. I would draw up a cable which the
3351 other agents would approve of, and it would be sent by the secretary to the London secretary.

Q. You mean the secretary of the New York conference? A. Yes.

Q. So that you would not think of fixing the rate here without first consulting with the agents of the other lines here, and then have the secretary of the conference representing all the conferees cable to the London conference, is that right? A. That is the idea.

Q. And then if the rates should be made it would be by
3352 authority of the London conference? A. Precisely. Of course, there are some exceptions, but that is the usual method of procedure.

Q. Well now, is it customary to make contracts with shippers for periods of three months without their asking for a diminished rate? A. Sometimes, yes.

Q. Isn't that rather exceptional? A. No, because all the rates fluctuate and if the shipper has any definite business to be done he wants to be protected on his rates.

Q. What per cent. of the contract—time contract—shipments is carried on where the shipper accepts the rates that you quote as against that where concessions were

made from the ta rate? A. That is a very difficult 3353
question to answer.

Q. I do not expect that you should be accurate about it, but you can give us some general idea? A. Contracts are rarely made except for large blocks of freight, or a regular movement of freight for a given period.

Q. Aren't the contracts made largely by these very large shippers and they are very few in number? A. Yes.

Q. So that the great number of shippers that do business with the conference lines do not make these time contracts? A. No, they have a different class of business altogether. 3354

Q. And they usually in cases where they get the rates for a certain ship send their commodity, is that right? A. That is the usual way. A man may sell a thousand barrels of resin for shipment over three months and he would want his rates protected for that three months, but the number of those contracts are small.

Q. So the ordinary shipper, I mean to say who ships rather in small lots as against large lots, simply comes and you quote him this rate? A. Yes.

Q. Whatever it is? A. Yes.

Q. Now, it is not usual to give him a rate for less than 3355
the tariff rate, is it, that kind of a shipper? A. No.

Q. In other words, the exception from the established or printed list is in favor of these large shippers? A. No, it is not, Mr. Baldwin; that is hardly the point.

Q. It is not the question whether it is hardly the point; we won't argue that? A. A large shipper has a different class of business entirely to the small every day shipper, and his business is taken care of and catered for in an entirely different way.

Q. Whatever may be the reason or inducement the fact 3356
of it is that you do not make concessions from the tariff rates unless the shipper is in a position to arrange for large shipments, or for a period of time, isn't that right? A. Well, it is right to a certain extent; as I say, it is a different class of business.

Q. Well, we will assume it is a different class of business—— A. But anyone who has that large block of business and is ready to make a contract gets the same rate as any other man who has the same.

Q. Precisely. If he is a large enough shipper and has sufficient commodity to be shipped to the Brazilian ports

3357 and makes an application for a rate less than the tariff rate, then you consider it, don't you? A. Yes, but it is not regular commission house business; it is a different class of business altogether.

MR. SPOONER: What do you mean by that?

THE WITNESS: You might consider it tariff business; we make a tariff to cover special lines.

Q. I don't think that there need be any ambiguity about this; perhaps you do not understand me or I don't
3358 understand you. The point I make is this, in order to get a concession from the tariff rate the applicant must be in a position to guarantee large shipments and for a period of time, isn't that right, regardless of the commodity, it must be a large shipper? A. Well, there are no special rates granted to anybody. It is rather a technical point that is somewhat difficult to explain. The commission house business goes along from month to month; all the houses get the same rates. The southern concessionaires that you are talking about, they all get the same rates.

3359 Q. Probably I do not make myself clear. Under what conditions will you make a contract by which you concede to the shipper by authority of the London conference, we will say, less than your established rate upon the commodities shipped? A. If his business seems attractive——

Q. That is very vague; what do you require from him? A. A specified quantity of business.

Q. And for a given period of time? A. For a given period of time.

Q. And this special quantity is a large quantity or a small quantity? A. A large quantity.

3360 Q. And for the period of time that he makes the contract that he shall send all of his goods over these lines? A. On some contracts all his shipments; not on all contracts.

Q. Well, mostly? A. Mostly.

Q. You do not mean to specify the quantity on a boat, but a specified quantity during a period of time? A. Over a period of time. We would specify all the shipments. The shipper wishes protection on all his business. On the other hand, we have to provide tonnage for all the business. Therefore, as I mentioned yesterday, it is purely reciprocal, but there are no discriminating rates; that is to say, on the same class of business.

Q. Any persons who will put themselves in the same class 3361
of business, in the same position, you will give them that rate? A. That is it exactly.

Q. That is to say, if a person, regardless of whom he may be, his business is attractive enough, that is to say, it involves enough in volume, he can get the same concession that any other person would get in the same business in the same commodity for the same period of time, is that what you mean? A. Yes.

Q. But if he is a small shipper and therefore his busi- 3362
ness is not of that volume to be attractive then he cannot get that special rate, can he? A. No, I wouldn't say that at all.

Q. That is what I want to understand? A. Then the rate is established to cover that and not a differential rate between the large shipper and the small shipper as I have tried to explain. It is a different class of business. We do not discriminate against the small shipper; he has the same chance as the big shipper.

Q. That is, you mean to say, for instance, that if a ship- 3363
per wants to ship, we will say, sewing machines to the Brazilian ports and he is a casual shipper, or does not ship in large quantity, that he would be given precisely the same rate that you would give to a large shipper, say like the Singer Manufacturing Company? A. No, I think that is an exception.

Q. Then take some other cases; I mean a small shipper? A. The sewing machine rates were made in competition with English factories, with the same class of factory abroad, and if the rates on this side were above a certain level the machines would be shipped from the other side.

Q. Take, for instance, the Home Sewing Machine Com- 3364
pany, did you quote the same rate to the Home Sewing Machine Company that you quoted to the Singer Manufacturing Company? A. I don't believe that there are any other sewing machines shipped into Brazil, but if any manufacturer outside of the Singer were to ship he is covered so that he could do trade with Brazil. He would be accorded the same rates as the Singer.

Q. The Home Sewing Machine Company ships to Brazil, doesn't it? A. Not that I am aware of. They may; their shipments are very inconsiderable.

3365 Q. Don't you know the Home Sewing Machine Company are shippers of sewing machines to Brazil; don't you know that, and have been for years? A. I don't recall it. Their shipments are very inconsiderable if they are.

Q. Don't you know whether or not the Home Sewing Machine Company at various times made application to have the same rates quoted to them as the Singer Sewing Machine Company, and it was refused by the conference here? A. I do not.

Q. These fluctuations of rate that you speak about, do
3366 you refer now to rates that had an established tariff rate; do you speak of commodities that have an established tariff rate, or do you refer to such articles as kerosene and things of that kind? A. All articles have an established rate, although that rate may change from day to day.

Q. Kerosene and oil did not have a regular printed established rate, did it? A. No, because they fluctuate so frequently. They were changed from time to time by memorandum.

Q. Your printed tariff always provided, did it not, that
3367 those rates were to be marked special? A. Any rate in the tariff was liable to change.

Q. That does not answer my question at all. A. A number of the staple articles were carried on memorandum because of the frequent changes.

Q. I am asking you about kerosene; that was always marked special on your printed tariff, wasn't it? A. Yes, because of the frequent changes.

Q. I don't care why; I think I am entitled to a yes or no on that question.

3368 MR. SPOONER: I don't think you are. You are examining this witness and he has certainly shown no evidence of hostility.

MR. BALDWIN: Here is a witness connected with one of the defendant corporations and, of course, a greater latitude is allowed in examination.

THE WITNESS: It is a very technical subject and it is very difficult to make clear.

Q. That may all be true, but, nevertheless, I am entitled to an answer fairly responsive to the question that I ask, and do not forget the fact that you are represented by very

competent counsel, who, when it comes to his side of it, 3369
can clean up anything you want cleaned up. Are the rates on commodities arranged in the same place for those under contract and those not under contract? A. Will you repeat that question?

Q. (Question read.) And by the same authority? A. I do not quite understand the question. Do you mean are they arranged by conference authorities through London? Is that the point?

Q. Yes? A. Yes, they are; all rates.

Q. Mr. Betts, can you state what the flat rate was for 3370
sewing machines in the year 1911 to Rio? A. The tariff rate?

Q. Yes? A. 21 cents I believe.

Q. 1911? A. Yes.

Q. Here is a schedule that has been made up, Exhibit 198, which shows that the flat rate was 25 cents per cubic foot and ten per cent. primage if it went on the Lamport & Holt Line—in 1911; where do you get that information, Mr. Betts? A. This is a memorandum that my assistant made up for me and I have reason to believe it is correct. 3371

Q. Do you know whether or not the Home Sewing Machine Company paid a flat rate of 25 cents per cubic foot to Rio de Janeiro in 1911? A. I do not recall any of the shipments of that concern at all.

Q. It seems that they shipped on one of your lines, the Crosby, at the rate of 25 cents? A. Possibly so.

Q. You don't know about that? A. I could not possibly remember; we have a number of shippers on all our steamers.

Q. In any event the rate that was quoted for the same 3372
period of time to the Singer Manufacturing Company by this contract Exhibit 160, which you executed, is 18 cents? A. 18 cents yes. Are you sure that was Rio de Janeiro?

Q. Yes, Rio de Janeiro? A. Or was it Rio Grande?

Q. No, Rio de Janeiro? A. I can look it up, Mr. Baldwin.

Q. I may say for your information, Mr. Betts, that I have here a list of the shippings of the Home Sewing Machine Company for these respective years, and I find that they shipped over your line and that was the rate in 1911 they paid, not only quoted, but paid, 25 cents; but you can verify that yourself? A. I will be glad to do it. Might I look at

3373 that list of the Home Sewing Machine Company, Mr. Baldwin?

Q. Yes? A. (After examination.) I see here the shipments are very inconsiderable.

Q. They are small shippers and I was asking about small shippers. Now, you are familiar more or less with Exhibit 1 in the Petition, which is the agreement between these conference lines? A. Is that the traffic agreement?

Q. Yes? A. Yes.

Q. And also with the pooling agreement that was in force
3374 and afterwards abandoned? A. Yes.

Q. You are more or less familiar with that? A. Yes, both of them.

Q. Now, I wish you would state the method after the agreement was made up to, say, until August, 1908, under this agreement of your booking and your making rates and the division of cargo; how was it done; what was the modus operandi? A. As far as I remember each agent booked for his respective line; there may have been some contracts made in that period, but I do not recall them.

3375 Q. How were the rates fixed? A. The rates, minimum staple rates, were provided in that traffic agreement as I remember it.

Q. Yes? A. And I believe that at that time the agents had some latitude on the staples.

Q. And how long did that latitude, the right to exercise the discretion, last? A. I don't think for over two years.

Q. Then it was taken away entirely? A. Yes.

Q. So that on staples like every other article, if there was to be a change made authority would have to be ob-
3376 tained from the London conference? A. Yes. I would not be quite sure of the date.

Q. Well, about 1910, was it? A. I think so, yes. It is a matter of record.

Q. Are you quite sure that after the agreement was made in 1908 that the bookings were made by each agent for his respective line, or was it made by him for the benefit of all the lines in the conference? A. No, only in case of contracts; each agent booked for his own steamer.

Q. But in the case of contracts? A. In the case of contracts they were all intended for division amongst the lines according to the shipper's requirements and what particular boat might be on the berth at the time.

Q. Now, what was done with reference to reporting the 3377
shippings, where they were not made by contract during this period I mentioned, from January to August, 1908? A. We simply reported how many thousand cubic feet of cargo had been engaged without specifying what it was, with the exception of kerosene and flour, which we used to specify; but with that exception we would simply report the total number of cubic feet engaged.

Q. And what was the purpose of reporting that? A. So that each agent might see how the other was getting along with the loading of his ship. 3378

Q. Wasn't it also for the purpose of ascertaining the amount of the pool? A. That was during the pool period, yes.

Q. Wasn't that one of the reasons? A. No, not during the loading of the ship. It had nothing whatever to do with it.

Q. After the loading then was reported, after you made the contract and the shipments had gone out, then what did you do with reference to reporting to the conference? A. All the manifests of the steamers were surrendered to the 3379
secretary.

Q. And for the purpose of making this division? A. Making up accounts. He made up accounts and sent them to London.

Q. Was there anything done during that same period with reference to the division of cargo? A. No, no cargo was divided, except contracts.

Q. Then where you had contracts it was the method of operation, you would divide those cargoes under those contracts as equally as possible among all of the conferee lines, was that it? A. Yes, subject to the shipper's con- 3380
venience.

Q. Mr. Betts, I show you Exhibit 164, which is paragraph 149 of the New York conference minutes of November 11th 1908; just read it.

(Witness reads book.)

Q. You will notice the date of that is November 11th, 1908. Now, will you state what was the method of booking and the making of rates and the addition and division of cargo by these conferee lines after that date and pur-

3381 suant to this minute? A. As I remember that suggestion did not work out altogether——

Q. Just state what you did? A. As I remember, for a month or two it worked out in connection with the booking of oils, kerosene, but other contracts I don't think it was ever carried into effect.

MR. SPOONER: Kerosene and what else?

THE WITNESS: Kerosene was the only article on which that resolution was acted on, and even that only lasted for about a couple of months, or possi-
3382 bly three months.

Q. Do you mean to say that the business under contracts or by contracts was not carried out as provided for in this minute? A. No, it was not.

Q. For any of the commodities? A. Except kerosene.

Q. Kerosene was of itself a special line, wasn't it, a special business? A. That I believe was handled by each agent in turn for one month, and after that the arrangement fell through.

3383 Q. Then how was it handled after that? A. Each agent for himself.

Q. On time contracts? A. On all contracts, yes.

Q. You notice it says here that all contracts excepting bookings for specific sailings, shall be handled by each of the agents in regular turn; are we to understand that although that resolution was adopted it was not carried out? A. It was not carried out.

Q. Well then, the contracts during that same period made by each agent in turn—I mean time contracts—would be reported back to the conference and be for the
3384 benefit of the conferee lines just as before? A. Yes.

Q. How were the rates fixed immediately after this resolution of November 11th? A. The same way.

Q. That is to say it was fixed in conference? A. Yes.

Q. Upon the request of the agent of the line that was negotiating the business? A. Yes.

Q. And what was done about the division of cargo on time contracts; did that go along just as it did before? A. No change at all.

Q. On January 27th, 1909 I find in the minute book of the New York conference the following paragraph (261): "It is agreed that any agent who starts negotiation on

any special contract or booking after having a slip of au- 3385
thorization duly signed by all agents, shall continue the negotiation until concluded on such contract or booking without either of the other agents interfering with the negotiation." Now, what led up to that? What led up to that resolution? A. I don't remember the exact incident that led up to it, but it is self-evident that evidently one agent's negotiation had been interfered with by another, and, therefore, a resolution of that kind was put in to stop it.

Q. How was the business carried on then with reference 3386
to time contracts after this date with reference to the fixing of the rates and the booking and division of cargoes? A. Well, it was carried on in the same way. The agent could start and negotiate the contract and do it, and some agents are persona grata with some firms and not with others, and, therefore, some shippers while making a contract for the three lines preferred to negotiate it through one agent as against another agent. It is a matter, a good deal of personality between the respective traders.

Q. If there was any change from the rate would that be 3387
authorized by the conference? A. Always.

Q. And that method of conducting business has always been maintained, has it, right down since that time? A. Yes.

Q. Was there anything done after this time and down to the present time about the division of cargo, any arrangement about it between the respective lines on time contracts? A. It has always been the understanding that time contracts are for account of the three lines, and as far as their sailings will permit so as to connect with the shippers' arrival dates of cargo, why the cargo is divided 3388
that way. Some line at some time may get an undue proportion owing to the date at which the cargo arrives, this particular line having boats on the berth and the other line has not.

Q. Well, so far as possible then it was the general intent in the conduct of the business to divide the cargo? A. Proportionately.

Q. As equally as they could, is that the idea? A. That was the intent right through.

Q. Are you able to state, Mr. Betts, about in what proportion the business is shipped or shipments arriving from

3389 other places in the United States, that is here in New York, how it is divided up between the respective conferee lines? A. It mostly goes to the going boat as it arrives, unless it happens to be fast freight which required shipment by passenger boat.

Q. Doesn't it often occur there is an accumulation of freight here in New York and it has to be stored on the docks or in warehouses in some way and subsequently shipped; doesn't that often happen? A. Not of recent years, because the lines have provided sufficient tonnage

3390 to take care of the business.

Q. Then, in recent years it was of no particular facility then to the merchants to have increased dock space to house their goods? A. Every facility was granted the merchant by his being able to ship his goods as soon as they arrived.

Q. I say the size of the boats and the number of sailings made it unnecessary for the merchants, or the shippers to have space here in which to house their goods, because they went off regularly, is that right? A. Quite right, yes.

Q. Can you state in a general way about how the propor-

3391 tion of those would be between the respective lines as to these shipments from out of town merchants; would they get practically a ratable share of the business? A. Each line, yes.

Q. So that, say, in a given period of time, a year for instance, each line would get about as much as the other line of that business? A. I imagine so, with the exception possibly of freight which is to go by passenger boats, and that would not be shared by the slower boats at all.

Q. Well, that would be because of this necessity that it

3392 should go by the faster boat? A. Precisely.

Q. In other words, there is a certain class of freight that always goes by the boat that will land the merchandise at the port of destination in a reasonably quick time, and, therefore, they go on the passenger boats? A. Yes.

Q. And then there are other classes of freight that do not go upon those boats for that reason, and that kind of merchandise would be practically evenly divided during the year between the conference lines? A. I should say so.

Q. Are you able to state about the proportion of freight going over the conferee lines to Brazilian ports comes from places in the United States outside of New York? A.

No, I am quite unable to because we do not know its origin; it is largely booked by commission houses and they book the freight when it is here and we don't know where it comes from. There are not many shippers in the interior. 3393

Q. You mean direct shippers? A. Direct shippers.

Q. Most of the interior merchants operate through forwarders here? A. Commission houses here.

Q. Then, as far as your books are concerned, it would show that the shipper was the forwarder, or the commission house rather than the merchant who may have sent the goods to New York, is that the idea? A. Yes. 3394

Q. And for that reason you cannot give us an idea about how much inland business comes to New York to go over these lines? A. No, I cannot give any idea. A very small percentage.

Q. Whom do you issue the bill of lading to, to the commission merchant here, or is it made out to his principal? A. It is made out in the name of the commission house who ships the goods.

Q. So then in the bill of lading, copy of which you keep, nor the ship's manifest, would show who the true owner was, where it came from? A. It would not show its point of origin. 3395

Q. Would it show the name of the principal? A. It might show the consignee in Brazil.

Q. Yes, but it would not show who the owner was here of the goods? A. The owner is presumably the commission house; he buys his stuff and sells it.

Q. There are a great many commission houses here that operate as brokers, don't they, and they make the arrangement with the carriers to forward the merchandise of which they ostensibly appear as the owners, although they are in fact not? A. Not amongst the commission houses. There are freight brokers who do a forwarding business of that kind, but there is not much of that business done. 3396

Q. Aren't there a great many houses here that do a business as commission houses and also as freight brokers? A. No.

Q. Isn't there a good deal of business done by the freight brokers direct? A. Very little.

Q. What did you mean a moment ago when you answered a question by saying a very small percentage; that the

3397 business coming to New York to be forwarded on to Brazil is a very small percentage of the business? A. I imagine not. I imagine a large proportion of it comes from the interior, but a very small percentage comes as through shipment, from which we can tell its origin.

Q. Mr. Betts, what ports did the Sloman Line serve before it was taken over by the Hamburg Lines? A. I was not connected with the line then. I could not tell you.

Q. You were then associated with Funch, Edye & Company, weren't you? A. I was, sir.

3398 Q. And they were the agents for the Sloman Line? A. They were, yes.

Q. And subsequently became the agents for the Hamburg Line after it absorbed the Sloman Line? A. Yes.

Q. Well, why is it if you were with Funch, Edye & Company at the time they were the agents of the Sloman Line, that you cannot state the ports that they reached or served? A. I believe they served the same ports, but I could not tell from my own knowledge and I was busy with other lines at that time and did not pay any attention to

3399 the Brazil service.

Q. Then you would not know how frequent the sailings were of that line, would you? A. I would not like to testify, no.

Q. Mr. Betts, could you get that information of what ports the Sloman Line served? A. Yes.

Q. What other sailings were; I mean, how many sailings a year and the number of boats? A. Over what period, Mr. Baldwin?

Q. Well, take three years prior to the date that it was

3400 taken over by the Hamburg Line; I want the list of the regular sailings and also the additional sailings that may have been had during the same period? A. That is 1905, 1906 and 1907.

Q. You can certainly find out the ports that they served, can't you? A. Yes, I think so.

Q. And you may be able to find out with some certainty their sailings, both the regular and the irregular sailings? A. I will get what information I can.

Q. At the same time when you get that out I wish you would make up a list of the sailings of the Hamburg-American Line since it took over the Sloman Line? A. Since 1908?

Q. Yes, and the ports it served? A. All right, sir. 3401

Q. And in addition to that I would like to have you, if you can, furnish us with the tonnage carried by that line in 1907, the Sloman Line in 1907, and particularly the date and number of sailings of the year, and then the tonnage carried by the German Line? A. I can give you 1907.

Q. What were they? A. 18 steamers.

Q. And have you got information there that states the ports they served? A. No, it does not show what ports they served. I can give from 1907 up to 1912 now.

Q. You do not mean of the Sloman Line; it went out of 3402 business in 1908, didn't it? A. Yes, 1907, I think.

Q. You have the number of sailings of the Hamburg Lines? A. Yes.

Q. From the date they took over the Sloman Line; have you got the number of sailings and the tonnage of the German Lines from 1908 down to and including 1912? A. Yes.

Q. What are they? A. 1908, 19 steamers, carrying 52,966 tons; 1909, 13 steamers, carrying 56,770 tons; 1910, 16 steamers, carrying 93,126 tons; 1911, 13 steamers, carrying 115,103 tons; 1912, 18 steamers, carrying 126,786 tons. 3403

Q. What ports did they serve? A. They served from Pernambuco down to Rio Grande; not each steamer to all the ports, but they served all the ports alternately.

Q. Can you state the additions that had been made to the fleet of the Hamburg Line since the origin of the conference? A. The Hamburg Line for a considerable period conducted a service with chartered steamers.

Q. For a considerable period—embracing what period? A. Well, up to recently.

Q. Up to when? A. Up to recently; in 1909 they only 3404 had four of their own steamers.

Q. What were they? A. Out of 13 despatches. They were the *Santa Ursula, Desterro, Delicia* and *Sieglinde.*

Q. The Sloman Line was operated almost entirely by chartered boats, wasn't it? A. No, I think not.

Q. To the Brazilian ports? A. I think the *Siegmund, Sieglinde, Gunther* and *Gutrune.*

Q. Do you know how many boats the Hamburg Line took over from the Sloman Line? A. I do not, sir. The Hamburg-American Line took over the *Gunther* and *Gutrune.*

Q. Were they the only boats of the Sloman Line taken over by either of the Hamburg Lines? A. I believe so.

3405 Q. The Hamburg Line then continued to operate those four boats during and down until what period, or are they still operating? A. No, they operated them through 1909 and then put them in another trade.

Q. During the year 1909 were they operated exclusively in the Brazil trade? A. No, sir.

Q. You say there are only four of those boats out of thirteen in 1909 that were taken over from the Sloman Line and the others were chartered, is that the idea? A. There were seven boats that were owned by one or the
3406 other line out of 13 in 1909.

Q. Four of those were the ones that were taken over from the Sloman Line? A. Yes.

Q. And there were three that they themselves owned and the balance they chartered? A. Yes; there was only one chartered boat in 1909.

Q. And how many chartered boats in 1910? A. Nine.

Q. And how many chartered boats in 1911? A. Nine.

Q. And in 1912? A. Nine.

Q. The boats owned by the line from 1909 to 1912, are
3407 they the same boats for each year? A. No; they were larger boats, considerably larger boats.

Q. And in what year? A. During the years of chartering they were all very much larger boats; in 1910 the size increased a great deal.

Q. The chartered boats as well as the owned boats? A. On chartered boats, yes; they were all big boats.

Q. And they did not add the larger boats until what year? A. The owned boats?

Q. Yes? A. Until 1911.

Q. Do you mean in 1911 was the year they had larger
3408 boats which they owned themselves? A. Which they owned themselves; some of them, only some of them; in 1912 they were more.

Q. Can you state how many new boats were added each year beginning in 1909? A. They were not new boats until 1912. They were different boats. They were owned by the line. They were larger boats, but they were not new boats.

Q. Were they all larger boats that they added, whether new or old? A. Yes, much larger.

Q. Can you give us some idea of the tonnage of the boats that were taken over from the Sloman Line? A. About 160,000 feet of cargo.

Q. What was the size of the chartered boats that were 3409
put on the service in 1909? A. About 280,000 to 300,000 feet.

Q. And how were the size of the owned boats that were put on the service to succeed the boats of the Sloman Line that were taken off this service? A. About the same size, 280,000 to 300,000 feet.

Q. The new boats, what was the average size? A. The boats, the *Santa Anna, Santa Delicia, Santa Rosa* and *Santa Theresa,* they were put on in 1912, and they are boats that carried 280,000 feet of cargo. 3410

Q. Do these boats serve the River Plate trade as well as the Brazil trade? A. No, Brazil entirely.

Q. Were they kept continuously in this Brazil service? A. Not continuously. Sometimes they would go back from Brazil to Europe and be substituted by another and similar boats.

Q. You mean a boat of similar tonnage? A. Similar tonnage.

Q. Would any smaller boats come on to take their place? A. No. We have had a constantly increasing size of boat. That is borne out by the fact that in 1909 we had thirteen 3411
steamers which carried 56,000 tons, and in 1911 we loaded also thirteen steamers which would carry 115,000 tons, showing that the steamers were practically double the size.

Q. Did the amount of freight tonnage increase in 1908 over what it was by the Sloman Line in 1907? A. In 1907 the tonnage was more than it was in 1908.

Q. How about the number of sailings between the two years? A. There were 18 sailings in 1907, carrying 68,000 tons; 19 sailings in 1908 carrying nearly 53,000 tons. 3412

Q. What were the number of sailings in 1909? A. 13 sailings carrying 56,000 tons.

Q. And what did you say the tonnage was in 1907? A. 68,000 tons.

Q. So that in 1908 and 1909, in spite of the increased size of the boats, the actual amount of freight carried was less than it was in 1907, is that right? A. It was in 1910 that the size of the steamers started to increase.

Q. Regardless of the size? A. The trade started to increase in 1910.

Q. My question was if in 1908 and 1909 the amount of

3413 shipments in tons was less than it was in 1907 for each year? A. Yes, sir.

Q. What were the number of sailings in 1910 and the amount carried? A. 16 sailings carrying 93,000 tons.

Q. And the number of sailings in 1911? A. 13 sailings carrying 115,000 tons.

Q. And 1912? A. 18 sailings carrying 126,000 tons.

Q. Where was the freight paid on these shipments? A. In New York.

Q. Can you give us any idea of the amount received by
3414 the Hamburg Lines for freight—for this freight that you have mentioned? A. Not without looking it up.

Q. Supposing you give us when you furnish the other data you have been asked for this morning, some idea about that. It don't have to be correct; what I want to do is to get about a general idea of the amount realized. Mr. Betts, can you state the number of boats that were used in these sailings in 1907; you have already given the number of sailings; now, how many boats were used constantly at those sailings? A. I can give you a list of that kind and the dates they sailed.

3415 Q. I am not particular about that, but the idea is just the number of boats used in each one of those years, beginning in 1907, and the number of boats in 1909 and run through until 1912? A. I think it would be easier for me to give you this list with the sailings on it.

Q. This is a list of sailings which you have prepared? A. Yes.

Q. Showing the boats in 1907? A. Yes, sir.

Q. I suppose in 1907 that means the Sloman Line, doesn't it—just state how that is; in the list of steamers in 1907, are those the lists of steamers of the Hamburg Line or
3416 the Sloman or the Union Line? A. Those are the Union Line steamers in 1907.

Q. In order to get the record correct, I think you would better state how the purchases or the taking over of the Sloman Line was accomplished, the Sloman Line first taken over by the Union Line and then the Union Line in turn taken over by the Hamburg Line, is that the way it was done? A. Yes.

Q. So that the list of steamers and the sailings of 1907 would be the boats that were used by the Union Line, is that right? A. Yes.

Q. Appearing by this table or list of sailings? A. Yes. 3417

(Upon the statement by the witness that possibly there is some error in regard to some of the steamers listed, he agrees to prepare and submit a correct statement at the next hearing.)

By Mr. Montgomery:

Q. Mr. Betts, I think you testified that the tariff rates are based entirely upon the tariff rates of the conference between Europe and Brazil, is that right? A. I don't know where those original rates came from. When I took 3418 charge of the department the tariff was in effect. Where they had been made up or whether they were on a par with the European rates I don't know at that time. But when we revised the tariff two years ago it was revised absolutely on the European basis.

Q. Why was that? A. Well, because the shippers seemed perfectly satisfied when they are enabled to compete—

Q. I am not asking you what the effect of it is, or what the shipper thinks about it; I am asking you from the standpoint of the steamship man why the European tariff is used as a basis for the American tariff to Brazil? A. Be- 3419 cause the shipper wants to be able to compete with the foreign competitor and, therefore, we have to base our rates—we have got to have a rate that will satisfy the shipper. You tell him it is up to him now to compete; you have got your same rate for transportation and you have got to buy your goods as cheaply as the merchant in Germany or wherever it is.

Q. Then your answer would be that it is for the benefit of the American shipper? A. I think so.

Q. Does it ever work the other way; isn't it also true 3420 that the shipper in Germany does not want the shipper in America to have a better rate than himself; that would be true, wouldn't it equally? A. I imagine so.

Q. The rates in the tariff are sometimes departed from by cable and by conference to the conference in London and reply here? A. Yes.

Q. When that permission to vary the rates is refused, do they ever give you the reason for the refusal to lower the rate? A. I don't know that they do.

Q. Then, as far as you know the reason for not lowering the rate may be that they do not want the rate from

3421 America to be low because it may hurt one of the patrons of these conference lines from abroad; so far as you know may that not be the fact? A. I don't think so.

Q. I am not asking you what you think, but as far as you know, don't you think that is true? A. I don't think it is.

Q. But you don't know that that is not the fact? A. I don't believe it is the fact. I don't know either way.

Q. Wouldn't there be just as much reason for the conference favoring the European shipper—the conference abroad favoring the European shipper shipping by other
3422 lines to Brazil as for them to favor the American shipper? A. They do not want to favor either; put them on a par.

Q. That is not responsive. I asked would not the same reason exist?

MR. SPOONER: The question is not a proper question; it is calling merely for an opinion.

MR. MONTGOMERY: His explanation of adopting the system is only an opinion.

Q. Mr. Betts, do you know the firm of Neuss, Hesslein &
3423 Company? A. I do.

Q. What is their business? A. Commission house.

Q. Do they ship goods to Brazil? A. Yes.

Q. Did they come to you sometime ago about some shipments of cement? A. Yes.

Q. How much cement—was there some talk about shipping a large quantity of cement for them to Brazil? A. I only recall 10,000 barrels.

Q. Did they ask for a rate on it? A. Yes.

Q. Did you quote them a rate? A. I did.

Q. Do you remember what the rate was? A. The tariff
3424 rate.

Q. What was that? A. $7.20.

Q. And when was that? A. Possibly six weeks or two months ago.

Q. Did they object to that rate and ask for a lower rate? A. I don't remember that they did.

Q. As a matter of fact did they give you to understand that they only had 10,000 barrels of cement to go to Brazil? A. I think that was the enquiry.

Q. You are not sure about that? A. That is all I recall.

Q. Didn't they intimate that they would have a great deal more from time to time for quite a period? A. Not

to my knowledge. I have heard about it since. I do not 3425
quite know the drift of your question.

Q. It is not necessary to get the drift of the question; it is the fact I want. A. I say at the time I did not know any more than 10,000 barrels.

Q. What representative of Neuss & Hesslein did you talk with about six weeks ago? A. I forget the gentleman's name.

Q. Was it Saumenlich? A. I think so.

Q. You would not swear that he did not intimate to you that he had a very large quantity of cement, 150,000 to 3426
200,000 barrels, and that he wanted a lower rate than the tariff? A. I have no recollection of his doing so, although he gave me to understand that he had done so when I saw him recently.

Q. You quoted him no less than the tariff rate? A. Yes.

Q. Did he want the 10,000 barrels to go on one steamer? A. I don't remember.

Q. You don't remember anything about it; it did not make any impression particularly? A. No; there has been a large number of cement enquiries recently, and lots of shippers are cabling out on cement, cabling out every day, 3427
and it is only a small percentage of the business that goes through. I did not make any special impression on me. I had no idea they would secure a large order which they subsequently did.

Q. Did you take it up with the conference here or with any one to ascertain whether you might not be able to do better that $7.20 rate? A. I did not.

Q. You did not? A. No.

Q. Mr. Betts, as a matter of fact, didn't you tell Mr. Saumenlich some six weeks ago that your Line not only 3428
could not go below $7.20, the tariff rate, but that you did not have the space to carry his large quantity of cement that he was talking about? A. Not that I know of.

Q. You do not recall that at all? A. No. I would have been mighty glad to have it recently.

Q. Are you prepared to say under oath you did not make that statement?

MR. SPOONER: He is under oath. The suggestion there is not a very courteous one, if you will kindly permit the suggestion.

3429 Q. Are you prepared to swear, Mr. Betts, that you did not state to Mr. Saumenlich, some six weeks ago substantially and in substance what I have just stated?

MR. SPOONER: I object to the question upon the ground that it is incompetent for the Government to put its own witness that if their purpose is to lay a foundation for impeaching that it is not legitimate.

MR. MONTGOMERY: He is only our witness in one sense, and I want to find out whether the fact is that
3430 he does not recollect about it, or whether he has a recollection that is different about it, and I want to get the facts.

Q. (Question read.) A. What is the exact date you are discussing?

Q. The date of the conversation that you had with Mr. Saumenlich; was there more than one? A. Your records will probably show exactly the date, and I may be at fault; it may have been three months. I don't know exactly what
3431 date it took place.

Q. I will ask you this way: What was the date, about, that you had this conversation with Mr. Saumenlich about the 10,000 barrels, you say about six weeks ago? A. I do not recall. I have so many conversations about 10,000 barrels, and I cannot tell exactly, and if you will give me your dates I can possibly refresh my memory better as to whether I had room for it at that particular time or whether I did not.

Q. I am not asking you about room for a particular ship-
3432 ment at all, Mr. Betts; did you not, say about six weeks ago, or at any time recently, have a talk with Mr. Saumenlich about a very large quantity of cement moving to Brazil within a period of some months? A. Yes.

Q. When was that? A. It was quite recently.

Q. About when; about how recently? A. Oh, I imagine within the last 10 days.

Q. Leaving out that conversation, did you have a conversation with him about a large quantity of cement moving to Brazil recently? A. No. The only conversation that I recall is the 10,000 barrel lot. I do not recall there was anything larger, anything like 150,000 to 200,000 barrels

that you refer to, because I should have paid more atten- 3433
tion to it if I had understood it was a large volume like that.

Q. Are you prepared to say that at that conversation or at some other conversation within the last few months you were not asked by him for a rate on a large quantity of cement, 150,000 to 200,000 barrels? A. I don't think that I was.

Q. You don't think you were? A. No.

Q. But you are not sure? A. I feel convinced I was not.

Q. Are you prepared to say that you did not tell Saumen- 3434
lich at the same conversation within the last few months that your lines did not have the space to carry a quantity of cement that he was negotiating with you about or had asked you about? A. I never heard of any quantity that would tax the lines' ability to handle; never heard of any quantity at all.

Q. Did you ever make such a statement? A. Never in my life.

Q. You never said, as far as you remember, or you are prepared to swear that you never did state that you did 3435
not have the space for the cement for Neuss, Hesslein & Company? A. That is coming back to the old question of 10,000 barrels. Now, you say I am supposed to have told him I had no room. This last time I might not have had the room; I don't know the date you are talking about, but should want to know all about the transaction. All I recall is a quotation of $7.20 on 10,000 barrels made six weeks or possibly two months ago. Recently we had cable authority from the other side in reply to an enquiry of ours as to reducing the rate on cement. We had cabled authority 3436
to reduce our rate as the rate then had been reduced on the other side. As soon as we had this authority I informed Neuss & Hesslein, remembering that they had enquired sometime previously, and I notified them of this lower rate.

Q. You mean the conference had a cable from the other side saying that the rate had been reduced in Europe? A. Yes.

Q. Have you a copy of that cable? A. Not with me.

Q. Can you produce one? A. I can, yes.

Q. And can you produce the reply to it; was it in reply to another cable of yours? A. Yes, sir.

3437 Q. Can you produce that? A. Yes. To continue, I informed Neuss & Hesslein that I had remembered their enquiry and that now I had a better rate, as I understood from them they had in the meantime made large bookings with another line.

Q. What line did they book their freight with, if you know? A. I understand the Lloyd.

Q. Do you know what the rate was? A. I do not.

Q. Did you quote them at this conversation within the past 10 days; did you quote some other rate than $7.20?

3438 A. Yes, I quoted the reduced rate.

Q. What was the reduced rate? A. $6.00.

Q. Now, Mr. Betts, you said you had information that they were shipping by the Lloyds this cement? A. He told me that himself.

Q. That is in the conversation about 10 days ago? A. Yes.

Q. Or before that? A. No, I never knew he had done any business until I gave him this revised rate, and then he came down to see me and said what additional business he wanted to work on.

3439 Q. Did you know at any time what rate Lloyds were getting on the cement? A. In a general way.

Q. What rate are they getting; do you know what rate he has got? A. No, I do not.

Q. You don't know what they are charging generally on large contracts? A. Well, it is our business to find out as near as we can, you know.

Q. What the Lloyds are charging? A. Yes.

Q. For what purpose? A. We want to know whether we can meet the rates or whether we cannot.

3440 Q. After you learn what their rate is and if it is below your tariff rate, what do you do then; if it is below your tariff rate do you just say you cannot meet it? A. Sometimes.

Q. And sometimes you cable, I suppose? A. Yes.

Q. And when this cable came from Europe authorizing you to lower your rate had you furnished them information as to what Lloyds were charging at that time? A. No.

Q. You had not done that? A. No.

Q. You knew the Lloyd rate, however? A. I don't think I did.

Q. Do you know how the cable rate, that is, the rate that the European conference by cable authorized you to

make in the cable that you speak of, compares with the rate 3441
of the Lloyd Brazileiro on large contracts of cement? A. I imagine that the rate compares favorably.

Q. Don't you know how it compares; don't you know whether it is more or less than the Lloyd is getting? A. I don't know exactly what the Lloyd is getting.

Q. You don't know what they are getting from Neuss, Hesslein on that shipment? A. No.

Q. Do you know whether or not the firm of Neuss, Hesslein was bidding for a contract at the time that they were negotiating for the rates on this cement on a contract 3442
to Brazil? A. Mr. Saumenlich told me so when I saw him 10 days ago.

Q. He did not tell you that six weeks ago? A. No. The enquiry——

Q. Do you know whether he got the contract? A. I don't think so.

Q. You don't think he got the contract? A. He got some contract evidently, otherwise he would not have closed with the Lloyd.

Q. He got a contract for some 150,000 or 200,000 barrels, didn't he? A. I don't know that. 3443

Q. You don't know whether in negotiating for those contracts he was competing with some German firms, do you? A. He told me he was.

Q. When did he tell you that? A. 10 days ago. I didn't know it before. I told him he was very foolish not to come and tell me that sooner, because it was he who ascertained the rate. He knew the rate before I knew it.

Q. Do you know what the European rate was at that time from Hamburg to Brazil? A. Only what our cable gives us. 3444

Q. What do you mean by "our cable"? A. The cable I have referred to.

Q. I am talking about before there was any change, when your tariff rate was $7.20, and when you quoted that to Mr. Saumenlich. Do you know what the competitors of Mr. Saumenlich in Hamburg were quoted? A. I presume they were quoted the same rate.

Q. $7.20? A. I don't know about that.

Q. You don't know about it? A. I don't know whether our rate was reduced here simultaneously with the reduction from abroad or not.

3445 Q. It may have been reduced sometime after the reduction abroad? A. It may have been.

Q. If there was a reduction? A. I don't know.

Q. The rate abroad might have been reduced for one single contract and the tariff not been reduced at all, mightn't it—the regular tariff? A. I couldn't say.

Hearing adjourned to Thursday, May 29th, 1913, at 10:30 o'clock A. M.

3446 New York, May 29, 1913

By consent hearing adjourned to Monday, June 2nd, 1913, at 10.30 o'clock A. M.

New York, June 2nd, 1913.

By consent hearing adjourned to Tuesday, June 3rd, 1913, at 10 o'clock A. M.

New York, June 3rd, 1913.

3447 Hearing resumed pursuant to adjournment.

APPEARANCES:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles C. Burlingham, Esq., for Frederick T. Busk, et al.

MESSRS. SPOONER & COTTON, by J. C. Spooner, Esq., for Paul Gotthiel, et al.

3448 Mr. Kirlin being detained it is stipulated to proceed subject to his right to cross-examine after examining the record.

CLEMENT H. BETTS recalled.

DIRECT EXAMINATION continued by Mr. Montgomery:

Q. Mr. Betts, I think you testified the other day that Mr. Saumenlich did not talk with you about a large shipment of cement, personally? A. I did, and I have since looked up our records and I find that Mr. Saumenlich came and called at our office and saw two of my assistants about the

27th of February, which you will note is a good deal prior 3449
to the date on which I told you that I recalled a conversation with him about 10,000 barrels in one lot.

Q. A personal conversation? A. Yes. And he made an enquiry on the 27th of February for a rate on 20,000 barrels of cement monthly for Rio and Santos for twelve months.

Q. Who were those clerks, Mr. Betts? A. One was Mr. Drew and one was Mr. Kaiser.

Q. Was that enquiry called to your attention? A. The enquiry was called to my attention, and I cabled that even- 3450
ing asking the London secretary what rate we might quote on the enquiry.

Q. Have you a copy of that cable? A. Yes, sir.

Q. May I see it? A. Yes. (Producing paper.)

Q. Read the cable and reply to it, giving the date? A. We sent a conference cable on the 27th of February, 1913, as follows: "What rate may we quote Neuss, Hesslein & Company 20,000 barrels cement monthly Rio Santos 12 months," and we received a reply from London on the 1st of March reading: "Neuss, Hesslein & Company cement 3451
tariff."

Q. Meaning, I suppose, that you might quote the tariff? A. Meaning that we might quote the tariff.

Q. You always had a right to quote the tariff rate to anybody, hadn't you? A. We would not quote the tariff for twelve months on a large parcel; in fact, all of our rates are made three months ahead.

Q. Your enquiry, however, was for the purpose of seeing if you could not give them a lower rate than the tariff? A. Partly that and partly to see if the conference would bind 3452
themselves to handle 20,000 barrels a month for twelve months. You remember the other day you mentioned that it had been reported to you that the shipment was too large for the lines to handle, and I want to show you that we quoted on the entire shipment.

Q. You don't know, do you, Mr. Betts, whether or not Mr. Drew when that enquiry was made told Neuss-Hesslein that your lines probably would not be able to carry such a large quantity? A. No, I know he did not; he referred the matter to me.

Q. He referred it to you? A. Yes.

3453 Q. And you took the matter up with the conference? A. I did.

Q. And did you take it up with the Hamburg-American office here also? A. No; it went through the conference in the usual way.

Q. Do you mean the New York conference of the Brazil lines? A. The cable was drawn up and signed by all the agents and sent off by the New York secretary to the London secretary.

Q. And that is the cable that you have just read into the
3454 record? A. Yes.

Q. Wasn't there also some talk with the Hamburg-American office at New York at that time? A. Not that I recall.

Q. What was the result of that; you just quoted Mr. Saumenlich of Neuss-Hesslein the tariff rate? A. I did.

Q. Did you quote that to him personally? A. I believe so.

Q. On what date about? A. Undoubtedly as soon as I received the cable.

Q. About the first of March? A. About the first of
3455 March.

Q. What was that tariff rate you quoted him? A. $7.20 to Rio.

Q. And the enquiry was to Rio and Santos, wasn't it? A. Yes.

Q. What was the rate to Santos? A. $7.80.

Q. Did Neuss-Hesslein avail themselves of that rate to ship any? A. No.

Q. When was the matter taken up with them again, or when was the next conversation with them about shipments
3456 of cement? A. Well, I previously testified that I have a recollection of talking to them about a lot of 10,000 barrels about six weeks or possibly two months ago.

Q. When was the next conversation that you had about a large quantity of cement? A. Immediately I received the cable, I think dated the 5th of May, in which we were advised of a reduction in rate and then informed Mr. Saumenlich that the rates had been reduced and gave him these rates which he said he would use.

Q. That is to say, this cable of the 5th of May which you handed me you say makes a reduction in the rate? A. (After examination.) Yes.

Cable of May 5th, marked Petitioner's Exhibit 222 for identification. 3457

Cable of May 2nd marked Petitioner's Exhibit 223 for identification.

Q. This cable, Exhibit 223 for identification, dated May 2nd, reads: "Will you give agents some discretion cement flour rates." That is a conference cable here, a cable sent by the conference in New York to the conference in London, is it? A. Yes.

MR. SPOONER: He has testified to that. 3458

Q. And that means, I suppose, will you give agents some discretion in making the rates on cement and flour? Cement flour rates mean cement and flour rates? A. Yes.

Q. What let up to sending that cablegram? A. We needed cargo and cement and flour was offering and the lines thought they could get a share of it with the reduction in the rates.

Q. And particularly this Neuss-Hesslein shipment was offering, wasn't it? A. Oh, no; there had been a large number of enquiries for cement; a very large number. 3459

Q. And in reply to that they sent this cablegram, Exhibit 222 for identification, which reads: "Cement agree amended European tariff rates as follows: Rio quay 30 shillings f. f. a., 25 shillings Santos, 27 shillings 6 pence Bahia quay 2 pound 12 shilling six pence 27 shillings 6 pence f. f. a. Pernambuco quay 32 shillings 6 pence 27 shillings 6 pence f. f. a." Now, that rate to Rio that they quote is the equivalent of what in dollars and cents? A. $6.

Q. And was the rate $7.20 which you spoke of as the tariff rate quoted in March, was that an f. f. a. rate? A. It was. 3460

Q. So that that is a reduction of—— A. Five shillings, $1.20.

Q. This speaks of an amended European tariff, this cable that I have just read to you, doesn't it? A. Yes.

Q. What is the meaning of that; does that mean that the conference——

MR. SPOONER: Why don't you let him answer?

Q. Explain what that means; amended European tariff

3461 rate? A. I presume that the rate had been amended to this new rate. Their tariff had been amended to those rates that are quoted there.

Q. Their tariff; what do you mean by "their"? A. The European tariff.

Q. What European tariff? The European tariff of what line or lines? A. The European conference.

Q. Who are they? A. I really could not tell you all the lines that are in it.

Q. The Hamburg-American is in it? A. Yes.

3462 Q. Lamport & Holt are in it? A. I believe so.

Q. You don't know what others? A. The Hamburg-South American.

Q. And isn't it your best information that all the lines that trade between Europe and South America are in it? A. No, I think not. There are a number of tramps, outside boats——

Q. I don't mean tramps; I mean lines? A. There are a number of boats that are loaded.

Q. I am talking about lines; I said the regular lines.

3463 (Question read.) A. All the regular lines I believe.

Q. Then those lines have a conference like yours? A. I don't know.

Q. Or some conference that makes rates and has a tariff? A. I only imagine so. You ask me to testify about something I don't know; I believe so, but it is not competent testimony.

Q. You have seen this tariff? (Showing witness Exhibit 158.) A. I have.

Q. I notice that that has not the names of any lines of

3464 steamships on it; now, do you know the names of any lines that issued that tariff? A. I do not.

Q. At any rate some conference, composed probably, you suppose, of all the lines that trade between Europe and South America; all the regular lines, issues a tariff and that Exhibit 158 is a copy of those tariffs, is that right? A. As far as I know, yes.

Q. And this cablegram says that the tariff gotten up by that conference had been amended as to cement, and that instead of charging the equivalent of $7.20, as they had been, they were charging $6 to Rio? A. Yes.

Q. Free from alongside? A. Yes.

Q. That is a fact, is it? A. That is what the cable says.

Q. Now I wish you would refresh your recollection by looking at this cablegram and tell me from that when the European tariff was changed; that is, when the rate from Europe to South America was changed from $7.20 to $6? A. There is nothing in this cable to show. 3465

Q. When was it changed, as a matter of fact; the cable speaks of it as the amended European tariff; when was that amendment made from Europe? A. Will you allow me just one moment?

Q. Certainly. A. (After conference with counsel.) I am not sure when it was made, but I believe it was made effective on the first day of May. 3466

Q. What makes you think that? A. I had information from the other side.

Q. You had information from the other side? A. Yes.

Q. What do you mean, before this cable? A. No.

Q. Was this cable the first notice that you had that any change had been made in the European tariff on cement? A. It was.

Q. It was? A. Yes.

Q. And it was in response to an enquiry on cement from you? A. It was. 3467

Q. You don't know how long this had been in effect—you think it was from the first of May? A. I believe it was from the first of May.

Q. What information did you have or have you had from the other side to show when that change was made in Europe? A. I enquired a day or two ago.

Q. From whom? A. Hamburg.

Q. The Hamburg office here? A. No, from Hamburg.

Q. When the European rate is changed, Mr. Betts, what is the practice about notifying you; how do you get your notice of the change in the European tariff? A. By cable. 3468

Q. From the conference in London? A. From the conference in London.

Q. You don't get that information from the Hamburg-American Line here? A. Yes, sometimes, small insignificant matters come through by mail. When I say insignificant matters, I will give you an instance that I recall, a rate on cuckoo clocks. I suppose they did not think that was worth cabling about.

Q. And that came to you from the Hamburg-American office? A. Yes, sir.

3469 Q. But where a change on a commodity that is moving in large quantities from both countries is to be made that comes by cable? A. That comes by cable.

Q. And do you receive a cable to the effect that the rate is going to be changed in Europe at a given time? A. No.

Q. You get the notice that it has been changed? A. We do, yes.

Q. And, of course, up to the time you receive your notice whatever you quote here is the prior rate? A. We believe so.

3470 Q. And when they send these notices do they say that the European tariff has been amended, or do they say the European tariff was amended on such and such a date? A. No.

Q. So that when you get your notice you never know how long that change has been in effect? A. No, we do not.

Q. Doesn't that handicap you somewhat in protecting the parity of rates which you say exists for the benefit of the American shipper exclusively? A. It would if it was not simultaneously done; but I have no reason to believe
3471 that the changes are not made simultaneously.

MR. STOONER: He never said it existed exclusively for the benefit of the American shipper.

MR. MONTGOMERY: Perhaps that was somebody else.

MR. STOONER: I think it was; I think it was Mr. Montgomery.

MR. MONTGOMERY: I think one of the witnesses tried from his general knowledge to establish that fact. I am not sure.

3472

Q. As a matter of fact, Mr. Betts, you testified I think the other day as follows—we were speaking about whether or not German firms were competing for the same contracts in Brazil, and you testified: "Q. You don't know whether in negotiating for those contracts he was competing with some German firm, do you? A. He told me he was," and then the question: "When did he tell you that? A. Ten days ago. I didn't know it before. I told him he was very foolish not to come and tell me that sooner because it was he who ascertained the rates. He knew the rate before I knew it." Now, you mean he knew the

European rate before you did? A. When I quoted him the 3473
$6 rate he told me that that was the rate that he had ascertained was the European rate. I did not ask him on what date he ascertained that that was the European rate and I don't know when it was; but he did know it before I knew it.

Q. That was when you quoted the $6 rate? A. Yes.

Q. Are you sure about that, Mr. Betts? A. Quite sure.

Q. Are you sure he did not tell you what the European rate was before you cabled? A. I am quite certain.

Q. When do you think this conference took place in 3474
which he told you that he knew what the European rate was? A. I testified a few days ago that it was ten days or two weeks ago; I cannot remember any closer than that.

Q. You think that was the conversation in which he told you the European rate had been lowered? A. I know it was the conversation. I can fix the date——

Q. And you think it was later than the 2nd of May? A. The date was probably about the 5th or 6th of May, because he came down to see me. After I had advised him by telephone of these rates he came down to see me. 3475

Q. Do you know, Mr. Betts, whether or not there is competition in the sale of cement between German shippers and American shippers? A. Oh, yes, I know there is.

Q. How long has that been true, through all your experience? A. Ever since this country started I imagine to sell cement for export.

Q. At any rate, ever since 1908? A. Well, ever since this country was on an export basis on cement.

Q. And about how long has that been, do you know? A. I could not tell you that.

Q. And the competition is keen, is it, or not, between the 3476
two countries? A. It should be keen; I don't know how keen; I am not a merchant.

Q. You know as a matter of information that both the German firms, large German firms and large American firms bid on cement contracts down there, don't you? A. I should imagine so.

Q. You know that, don't you, in a general way? A. I don't know it of my own knowledge, but there is no reason why they should not. Large orders of cement, of course, the Germans compete for them.

Q. You say that the Hamburg-American Line told you

3477 about the date that this went into effect; that is to say, you went to them after it had gone into effect—went to them the other day and asked them when the European tariff on cement went into effect or changed, is that so? A. I didn't say that, I don't think.

Q. What did you say; where did you say you got this information that led you to believe that the tariff went into effect possibly the first of May? A. I got information by cable.

Q. From whom? A. Hamburg.

3478 Q. Who in Hamburg? A. The Hamburg-South American Line.

Q. Why did you cable them instead of the conference at London? A. Because I was desirous to get the information after your question the other day, otherwise I would have had no interest one way or the other. I would have assumed that the rate was not——

Q. Why wouldn't you get your information from the conference instead of cabling Hamburg? A. Sometimes it would be quicker to get information that way.

3479 Q. Have you a copy of the cable that you sent to Hamburg? A. No, I have not.

Q. Have you a copy of the reply? A. No, sir.

Q. Can you bring those up here at the next hearing, Mr. Betts? A. Yes.

Q. The copy of your cable to the Hamburg-South American and the original of the reply, or a copy of it, if you will say it is a copy? A. Yes.

MR. SPOONER: Is that the reply? (Handing witness paper.)

3480 THE WITNESS: Yes; this is the one I have been referring to; that is the reply.

Q. This then is the cable that make known to you the date on which the European cement rate of $6 to Rio f. f. a. went into effect? A. That is the cable.

MR. MONTGOMERY: I offer it in evidence.

Marked Petitioner's Exhibit 224.

Q. I notice the cable says the rate was made known the end of April; what did you construe that to mean? Made known to whom? A. I don't know any more than it says.

Q. Did you ask him when it was made known to anyone? 3481
A. No.

Q. Wouldn't that mean it was made known to the shippers in Europe?

MR. SPOONER: I object to that; it speaks for itself.

Q. As a matter of fact, have you any information as to when the shipper in Europe knew that the rate on cement was going to be changed the first of May; do you know whether the shipper in Europe——

MR. SPOONER: Give him a chance to answer your 3482
question.

A. I have no other information than that cable.

Q. Now, Mr. Betts, you have cabled at other times about rates on cement, haven't you? A. I testified early this morning that we cabled on the 27th of February.

Q. But I mean at other times in regard to other offers of cement from time to time? A. Oh, frequently, yes.

Q. Now, I show you a cable dated May 25th, 1910, from the conference at New York to the conference in London, 3483
and ask you if you recall that cable? A. I have no special recollection of it.

MR. MONTGOMERY: The cable reads as follows, to London: "May 25, 1910, Braconfer, London, what rate may we quote Hasenclever 50,000 to 75,000 barrels cement Rio, 25,000 to 40,000 Santos dead weight tonnage 16,000 tons shipment within twelve months."

Q. That is at page 24 of your second cable book, and 3484
on page 27 a cable from London May 31, 1910, "Braconfer New York referring to your telegram 25th Hasenclever cement 20 shillings Rio de Janeiro f. f. a. 22 shillings six pence Santos"; do you remember that? A. I do not especially recall it.

Q. Then on the 28th page on the same date as the last cable, that is, May 31st, 1910, a cable to London "Braconfer London referring to your telegram of 31st are informed that European rates large lots 15 shillings Rio de Janeiro f. f. a. Santos 7 shillings six pence may we quote same."

3485 Do you recall that? No, I can't say that I have any special recollection of it.

Q. These cables were sent? A. Yes.

Q. There is no question about that? A. Not the least in the world. We have so many of these cables. When a thing is a dead issue you forget about it.

Q. And on the 29th a cable from London, "June 3rd, 1910, Braconfer New York agree quotation as per your telegram of 31st Lamports under no obligation carry"; Lamports mean Lamport & Holt Line I suppose? A. Yes.

3486 Q. Now, this cable of May 31st to London states that the conference here was informed that the rates you have just been authorized to quote, 20 shillings to Rio yet that from Europe large lots move at 15 shillings; now, can't you recall where the conference got that information to base that cable on? A. No.

Q. That is rather a striking circumstance, isn't it; some one must have advised the conference here, or some member of it, that the European shipper was getting a rate on large lots five shillings lower than they were authorizing

3487 you to quote, mustn't they? A. Yes, the particular agent who was handling that enquiry.

Q. Is there any way you can tell who was handling that enquiry at that time? A. Yes, I can find out by looking up the rough draft of the cable to show who originated the cable. I did not I don't think.

Q. You don't know where that information came from at all? A. The shipper undoubtedly notified the agent who was negotiating that particular parcel. Shippers very frequently tell us that they are being underquoted by

3488 Europe and that rates are lower.

Q. From Europe you mean? A. Yes; and we very frequently investigate the matter by cabling and find out the shipper is wrong and that he has not got a low enough price for his merchandise. It is not the difference in the ocean rate, but the difference in the cost of the material very often. Shippers often tell us that and it is not correct; whether it was in this case or not I cannot tell.

Q. Sometimes it is correct? A. Sometimes it may be.

Q. And sometimes you get information through these statements of the shippers that you find they obtained from the conference, don't you, from your experience? A. We sometimes do and then we will make the enquiry.

Q. And find that the shipper is right about it? A. Some- 3489
times he is right and sometimes he is wrong. I would like to bring in one point to finish up that evidence, Mr. Montgomery.

Q. All right? A. In large enquiries we have often found that the conference lines are being underquoted by outside boats.

Q. Wait a minute. Now, you mean conference lines here or conference lines over there? A. No, conference lines from Europe are being underquoted on large blocks of freight by outside boats. 3490

Q. Such as tramps I suppose? A. Well, yes, tramps. They are not regular lines, but speculative charters, and while the conference may be maintaining exactly the same rate there may be a lower rate from Europe that is quoted by these outsiders. That has often developed on not only cement but in other cargo.

Q. And whether the European conference is meeting the rate of that competition you, of course, are not advised? A. I don't think they do.

Q. Never mind about what you think; I say when a low 3491
rate is offered over there by a tramp or some competition that might arise temporarily, whether the conference rate meets that competition rate you don't know; not you don't guess, but you don't know? A. No, I know they do not.

Q. How do you know that? A. Because I have been informed so.

Q. You have been informed that they do not? A. I have been told so.

MR. MONTGOMERY: I ask to have stricken out what he has been informed. 3492

MR. SPOONER: I object to its being stricken out.

Q. You do not mean that you have been informed by cable from the conference that temporarily a rate is being—or that they are not meeting this competitive rate, do you? A. Not by cable, no.

Q. Or by letter from the conference? A. Not from the conference, no. I have seen correspondence which states that this outside competition is ignored.

Q. You have also heard statements that the Lloyd opposition is ignored here, haven't you, by this conference; you have heard that kind of statement made right in this

3493 room, haven't you? A. I don't quite get what you mean by ignore.

Q. By the conference? A. It is ignored to a certain extent by the conference.

Q. And yet it is true, is it not, that very often the Lloyd's lower rate influences the conference to make a lower rate, yes, or no? A. I would not say that is correct.

By Mr. Baldwin:

Q. Now, Mr. Betts, who negotiated the contract, Exhibit
3494 179, with the Standard Oil Company? A. I did.

Q. This is what you term a three signature contract, isn't it? A. I never heard it called that. It was signed by all the agents.

Q. Do you remember whether it was discussed at the New York conference here as to the right of having the Standard Oil Company contract signed by each one of the agents for the respective lines? A. My recollection is that they were cabled instructions that the contracts were to be signed by each agent.

Q. That is not my question. My question is whether you
3495 remember it was discussed in conference here? A. I don't think so.

Q. I show you Exhibit 166, which is paragraph 287 of the New York conference minutes; just read it? A. (After examination of exhibit.) What is your question, Mr. Baldwin?

Q. You said just now that you don't recollect it being discussed. Now, having read paragraph 287 of Exhibit 166, do you now recall whether it was discussed? A. I do not recall it being discussed, but I do recall that par-
3496 ticular minute you are referring to, and Mr. Daniels frequently made the point which we did not agree with him on; we did not agree that we were doing anything illegal and, therefore, we had no objection for all three agents at any time to sign any contract.

Q. There had been discussions frequently prior to February 10th, 1909, which is the date of this Exhibit 166, with reference to—I mean in the New York conference—with reference to the legality of the three signatures being appended to these contracts, is that right? A. Mr. Daniels frequently made that argument

Q. Won't you listen to my question and make it as responsive as you can? I didn't say anything about

Daniels. I asked if there was a discussion. Of course, you 3497
can say whether Daniels was the only party that mentioned or spoke of it, but my question is whether it was discussed? A. I recall a number of times discussions of that nature.

Q. It was the position of Mr. Daniels representing the Lamport & Holt Line that the contract bearing signatures of each of the agents of the lines was illegal for some reason or another, didn't he? A. I cannot speak for Mr. Daniels.

Q. Isn't that what he said or contended at the conference? A. That is his writing there. 3498

Q. I am asking you whether or not the conference that took place, that was what his contention was, yes or no; do you understand the question or will I have to repeat again? A. That is what he wrote there and that is what he said frequently.

Q. Now, you have it what he said frequently. Now, did he give any reasons why a three signature contract was illegal? A. Not that I recall.

Q. Now, let me read this to you, paragraph 287 of Exhibit 166—first, in whose handwriting is paragraph 287? A. Mr. Daniels. 3499

Q. You notice that parts of it there, the last two lines and a half, have pencil obliteration marks, don't you? A. I do.

Q. Do you know whether he put the pencil through those too? A. I imagine so.

Q. Let me read this to you: "L. & H. Line"—that means Lamport & Holt, I suppose? A. Yes.

Q. (Reading continued.) "L. & H. Line agents are informed by their lines that"—indicating words through which the obliteration marks are—"That such three sig- 3500
natures may be construed as an illegal combination which is, of course, contrary to the [illegible] and then ends. Now, don't you recall [illegible] he said, either at that particular conference meeting or at some conference meeting, immediately preceding, that they had advices from their lawyers that the contracts signed by each of the lines through their agents was illegal because it showed, or tended to show, a combination in violation of the Sherman Act, don't you remember that? A. I think I have answered that question already.

Q. Don't you remember that that was the reason he said? A. No, Mr. Daniels never gave any tangible reasons.

3501 Q. He wrote this in, didn't he, where he says "As an illegal combination which is, of course, contrary to the"; you remember that, don't you? A. That is his handwriting.

Q. Do you know who it was that suggested that a pencil mark or obliteration mark should be drawn through the words "combination which is, of course, contrary to the"? A. Probably in his own mind. Nobody suggested it that I remember.

Q. Was it done in your presence? A. Oh, yes; I think
3502 it was. He handed in the slip after they had completed it.

Q. While you were all there? A. I believe so, yes.

Q. Did he read it to you? A. No.

Q. Did you read it? A. I think so.

Q. Do you mean to say that he did not mention orally before he handed in the slip which finally became pasted in this book as paragraph 287, that they had advices from their counsel to the effect that a three signature contract might be held to be or would probably be held to be in violation of the Sherman Act.

3503 MR. SPOONER: It doesn't say anything about the Sherman Act.

MR. BALDWIN: I am asking him that; I don't care what it says.

Q. Is that right; did he mention it? A. I couldn't say he mentioned it then. He frequently talked in that way and we never conceded the point to him. Mr. Daniels wrote a number of memorandums there that went on the record, but it did not mean the other agents fell in line.

Q. I merely asked the question, did he in the oral con-
3504 versation that took place at the conference state that his lawyers had so advised him about these three signature contracts; you can answer that yes or no? A. I don't think he said any more than his slip, what you have read, carried out.

Q. You mean yes, that he did state, did he not, that the lawyers had advised him that the three signatures may be construed as illegal? A. Maybe.

Q. I am asking you that may be; I have never said it must necessarily be; did he say that? A. Frequently.

Q. Did he give any reasons why it may be construed as illegal? A. Not that I remember.

Q. Did he mention the fact that his lawyers had said so? 3505
A. Not that I know of positively. Mr. Daniels frequently had ideas which we did not agree with.

Q. I have not asked that question. I am trying to bring your memory down so that you can state with some degree of certainty what was said, not what your final conclusions were; I have not asked that. Now, this exhibit distinctly says that the Lamport & Holt Line had informed them that the three signatures to these contracts may be construed as illegal. Now, there is no doubt, is there, but what you saw that paragraph when he first offered it, is that 3506
right? A. With the obliteration or without it, do you mean?

Q. Either way? A. No, not without it. Because he very often writes an——

Q. Then you have a distinct recollection that when you first saw it the pencil marks were drawn through the last two and a half lines, is that right? A. No, I could not say that; but I am under the opinion that they were. I am of the opinion that they—

Q. I am not asking an opinion; what I want is recollection? A. I could not recollect something back in 1909 as to whether three lines were cut out or not. 3507

Q. Do you have any recollection of his mentioning at the time that his lawyers said a three signature contract may be construed to be illegal; did he say anything like that, yes or no? A. I don't remember the particular meaning you are referring to. I do remember something came up like that very frequently and we did not take much notice of it.

Q. Do you mean to say that very frequently he contended to the conference that the three signature contracts were illegal for any reason? A. If anybody asked him to sign 3508
one, yes.

Q. I was not asking the reason why he suggested it; I am asking if he did say it.

MR. BALDWIN: Now, Mr. Commissioner, I do not want to harass this witness, but I submit I am entitled to an answer.

THE COMMISSIONER: I think the witness should answer the question.

Q. Can you state whether or not it was frequently discussed or contended for by Mr. Daniels? A. I did answer

3509 your question, Mr. Badwin. I say it was only brought up when there was some specific reason for bringing it up, which would be the question of signing a contract.

Q. Then it did occur frequently? A. No.

Q. Sometimes? A. Sometimes.

Q. Did he state the name of the man who advised him about that? A. I do not recall.

Q. In what journals do the Hamburg Lines advertise their sailings? A. The Journal of Commerce.

Q. Now, I show you here 15 Journals of Commerce—
3510 that is what they are, aren't they? A. They look like it.

Q. Look at them? A. (After examination.) Yes.

Q. That is the Journal of Commerce that you speak of; or those are copies of the Journal of Commerce that you speak of and which advertise sailings to take place? A. Yes.

Q. I call your attention to page 18 of the issue of May 2nd, 1912, just for the purpose of illustrating, the fourth column, there is an advertisement there, "the Hamburg South American Steamship Company, the Hamburg-American Line for Pernambuco and other ports, steamers
3511 *Nassovia, Wellgunde* and *Numantia,* Funch, Edye & Company, freight agents" and so forth; that is one of your advertisements, isn't it? A. Yes.

Q. And where that same advertisement appears for other boats here it is your advertisement? A. It is put in by the Hamburg-American Line.

Q. That is what I mean; it is the Hamburg-American Line advertisement for sailings outward? A. Yes.

Mr. Baldwin asks that the papers be marked for identification.

3512 Marked Petitioner's Exhibit 225 for identification.

Q. You are pretty familiar I suppose with the dates of clearances of the boats of the Hamburg-American? A. To Brazil?

Q. Yes; generally speaking you know that, don't you? A. Absolutely.

Q. Mr. Betts, I show you Exhibit 212, which is a schedule of the sailings of conference line steamers and other steamers, prepared by Mr. Gerhard, or under his direction, and more particularly the steamers despatched by the Hamburg Lines from New York to various ports in

Brazil from the year 1906 down to and including the year 1912; will you state whether or not those sailings are substantially correct? A. I imagine they are, but you asked me to make out a statement and I have made out a statement from our own records. You wanted a statement of sailings to the ports. 3513

Q. Upon my suggestion have you produced here a statement of the Brazil sailings of the Hamburg-American Lines? A. Yes, sir.

Q. From January, 1907 down to and including the 10th of May, 1913? A. Yes, May 10th, 1913. 3514

Q. Showing the ports of call, payable tons and vacant space all in the same schedule, is that right? A. No, sir; the payable tons and the vacant space is not on there.

Q. I notice on top the caption says "Showing ports of call, payable tons and vacant space"; if that payable tons and vacant space should be cut out just strike your pencil through it. (Witness does so.)

Q. Then it shows ports of call, is that it? A. Yes.

Q. And this is substantially correct? A. I believe so.

Q. Giving the names of steamers? A. Yes. 3515

MR. BALDWIN: I offer this, subject if counsel will agree later, not to have a repetition in the exhibits, that we may compare these to see how they coincide with Mr. Gerhard's statement. Is that statement agreeable to you, Senator?

MR. SPOONER: Yes.

Marked Petitioner's Exhibit 226.

Q. In the third column of this exhibit, Mr. Betts, you have it entitled "Date sailed"; that means the day of departure, does it not? A. Yes. 3516

Q. Actual departure? A. Yes.

Q. Do you know since 1908 whether or not your line of boats have sailed on the advertised or scheduled dates or whether or not there was an interval between the actual advertised date of sailing and the date that the boat actually went? A. May I look at that for a moment? (After examination of exhibit.) From 1910 our dates were not kept very regularly.

Q. How about from 1908 to 1910? A. I think they were kept fairly regularly.

Q. It happened very often, did it not, that they did not

3517 depart upon the scheduled time in those years? A. They were much nearer to their dates during those years than they were afterwards.

Q. That does not answer my question. I say from 1908 to 1910 it frequently happened they did not sail on schedule time? A. Yes, it frequently happened.

Q. In 1907 can you state whether or not the vessels departed, or your line, regularly on scheduled time? A. (After examination of Exhibit 226.) No.

Q. They did not? A. They did not.

3518 Q. Were you connected with the Hamburg Line or Funch, Edye & Company in 1907, in the freight department? A. Not with the Brazil Line in 1907.

Q. Then how do you know, Mr. Betts, that in 1907 they did not depart regularly on scheduled time if you were not connected with the Brazil freight department? A. I would like to withdraw that answer. I was thinking that was made up from 1908.

Q. Well, you can correct that? A. As far as 1907, I cannot testify.

3519 Q. Within the period that you personally know about were the sailings often more or less irregular; do you know what caused that irregularity? A. Steamers would be delayed coming up from Brazil and the service also was run during some of the years by chartered boats very largely, and it is difficult to get them on dates.

Q. Do you refer to after 1910 that they were run largely on chartered boats? A. After 1910, or from 1910, the service was run largely with chartered boats.

Q. And from 1908 to 1910 was it also largely chartered boats? A. In 1908 they were all owned boats.

3520 Q. How about 1909? A. 1909, that is thirteen sailings; 12 were owned and one chartered.

Q. Well, then, the irregularity in 1908 and 1909 was not conditioned upon the fact, or was not dependent upon the fact, that they were chartered boats? A. No, as I mentioned, it was partly the reason they were delayed in Brazil either owing to the very slow discharge there, or possibly by waiting for coffee to bring up.

Q. Any delays here occasionally; any conditions here that occasioned the delays? A. No conditions here that I remember.

Q. Never? A. I think it was very rarely we ever waited for cargo.

Q. All these contracts that you entered into, these time 3521
contracts, are contracts for large lots to be shipped within a given time or on a given number of sailings, have a clause to the effect that the carrier is to be given 20 days' notice of the date that the shipment is to go; that is right, isn't it? A. Usually, yes.

Q. So that assuming that a shipper having a contract wants to send his merchandise upon a given sailing in one of the conference boats, before he can avail of it, he must give notice to the conference or one of the lines in the conference the date that he expects it to go, that is right, isn't 3522
it? A. Oh, not necessarily.

Q. What is the necessity for the provision of 20 days' notice then? A. Well, if he had an abnormal amount of freight to move and had not protected himself by making his reservation of room, but with a normal movement of freight that would not be insisted upon—the notice would not be insisted upon.

Q. Then that provision of 20 days' notice is practically a dead letter unless he has an abnormal amount of merchandise to go out upon a given time, is that it? A. Yes; 3523
it only applies on something irregular and out of the ordinary. It is a protection to the steamship people so that they can provide adequate tonnage for the shipper's requirements.

Q. Take, for instance, the Singer contract, did they give you notice in advance of when they are going? A. They did.

Q. Are their shipments unusual every time, or usual? A. No, I should say they are just about the same all the year around.

Q. And yet they give you the notice? A. Yes, at the 3524
end of the month they will tell us what they expect to ship over the succeeding month, and tell us the name of the steamers by which they would like to ship.

Q. Does the Standard Oil Company give you notice? A. Always.

Q. Does the United States Steel Products Company give you any notice? A. We haven't any contract with them.

Q. How about the National Cash Register Company, does that give you notice too? A. I don't think so; their shipments are small.

Q. Are the Standard Oil Company's shipments in usual

3525 quantities about each time? A. Oh, they are fixed; that is fixed quantity specified in the contract.

Q. They give you 20 days' notice, don't they? A. They declare about the 5th of each month what they will have for the succeeding month.

Q. What other large shippers that have these contracts with the conference line or any of the conference lines that do not give the notice required in the contract of the date they expect to ship? A. I do not quite know how to answer that question. It is only, I think, the Standard
3526 Oil Company that do make a formal declaration on the 5th of each month; all of the others——

Q. You have answered about the Standard—— A. I say all other shippers——

Q. No; my question was any other than the Standard Oil Company and the Singer Company and the other one you have mentioned—I think you have tioned three, the National Cash Register Company- other large shipper other than any one of those thre ; not give you 20 days' notice, or notice und .ten con-
tracts? A. I don't know that the .ce. Each
3527 agent solicits the various shipper: .ne shipper——

Q. I don't think you understar ay question? A. I don't think I do.

Q. You have testified that all of these time contracts contain a provision for 20 days' notice by the shipper when he expects to ship? A. Yes.

Q. Now, I have asked you three of those shippers that have those contracts, and you testified that it is their custom to give notice. Now, eliminating those, what other large shipper or what other shippers, large or otherwise,
3528 that have time contracts that do not give you notice. Now, that ought to be plain? A. They all give us notice one way or the other. It may be in writing or it may be in reply to solicitation from the various agents.

Q. In any event then all the shippers that have these written contracts that we just mentioned do give you notice? A. Yes, they give us notice, but not itemized as to every package they are going to have; they tell us approximately what they expect.

Q. Do they give you approximately the 20 days' notice which is required by the contract? A. Undoubtedly.

Q. Does it not frequently happen that these conference

line boats here have more than one boat on the berth at the same time? A. That is nearly always so. 3529

Q. Do you know whether or not during the year 1907 that these same lines now in the conference would have more than one boat on the berth? A. I could not testify about 1907.

Q. I suppose you have rather a good recollection about the condition of business in 1908? A. Yes.

Q. There was a dearth of shipments in that year, was there not? A. Cargo was very scarce.

Q. Now, there is evidence here in this case that in 1907 there were fourteen sailings of the Prince Line, fifteen sailings of the Lamport & Holt Line and eighteen sailings of the German Line; and in 1908 there were nineteen sailings of the Prince Line, twenty-four sailings of the Lamport & Holt Line and nineteen sailings of the German Line that is correct, isn't it? A. As far as the German Lines are concerned, yes; I don't know about the others. 3530

Q. You say that there was a scarcity of freight in that year? A. Yes.

Q. It is also a fact that although there was a scarcity of freight that the tariff rates of the conference were higher than the competitive rates were in 1907 of the same boats or the same lines? A. I could not tell. I don't know what the 1907 rates were. 3531

Q. Have you any means of ascertaining among the files of your office, or from any source of information, what the rates were in 1907 of the German Lines? A. I don't think so.

Q. Mr. Betts, isn't there same avenue of information open to somebody by which we can learn what rates were charged by these two German lines in 1907 from New York to Brazilian ports? A. Yes. 3532

Q. Where would that be? A. We can get it from our manifests, undoubtedly.

Q. That is only one year; can you furnish that information for us at some adjourned hearing, ascertain what the rates were? A. Yes. You want rates on staple articles and general cargo.

Q. Yes. Could you get that same information for 1908 on the same articles? A. The conference started as I recall in June or July, 1908.

Q. Yes. Bring this 1907 down, of course, to the time of

3533 the beginning of the conference in July, 1908; bring it right down to the time they began to operate under the conference. Now, Mr. Betts, we have in evidence here already a printed tariff of 1904 with certain amendments, and I think Mr. Gerhard's copy of that printed tariff with a notation to the effect that those were the rates for 1908 as well, but there are so many changes and no evidence whatsoever yet obtainable as to when the amendments were made, therefore, if you can get your rate for your line for 1908 as well as 1907 it would facilitate mat-
3534 ters. Can you do it? A. I think I testified the other day that we have not got records of a number of the years in that tariff book.

Q. Will your manifests show that, too? A. No.

Q. Why would the manifests show for 1907 and not for 1908? A. They would not show when the rates were made.

Q. But they would show when they went into effect, wouldn't they? A. The manifests will only show when the cargo actually moved and the rate at which it moved. It may have been booked in January to move in June or
3535 May.

Q. Let it show what it will on that; I suppose the manifests will show the actual rate charged? A. The actual rates charged, but it will not show when the cargo was engaged.

Q. That does not make any difference. Let it show what it will, the actual rate charged and that will be sufficient. Now, if you will get that up from your manifest for some adjourned hearing? A. Just Rio?

Q. Rio and Santos. Mr. Betts, Exhibit 226, showing
3536 dates of sailings for steamers and so forth, includes the year 1907? A. Yes.

Q. That would be the sailings of the Union Line which was afterwards taken over by the Hamburg? A. No, those were Hamburg lines. They took over the Union Line on January 1st, 1907.

Q. You were asked for the sailings of the Sloman Line to Brazilian ports in 1905 and 1906; can you furnish those? A. 1904, 1905 and 1906.

Q. Have you got them? A. Yes, sir. (Producing papers.)

MR. BALDWIN: I offer that in evidence. 3537
Marked Petitioner's Exhibit 227.
THE WITNESS: They were the Union Line, not the Sloman Line.

Q. The Union Line you have already testified had taken over the Sloman Line? A. The Union Line was established July 1st, 1903, and took over the Sloman Line.

Q. Mr. Betts, have you ascertained the amount of freight collected by your line on shipments from New York to Brazil for the years 1907 down to 1912 inclusive? 3538
You were asked for that the other day? A. Yes.

Q. Have you got it there? A. I have a statement which includes not only the earnings but several other particulars on which I testified at the last hearing, and I found that some of my figures at that last hearing were incorrect, and I would like, therefore, to withdraw them and substitute this one, which covers the tonnage correctly. There was a mistake made in 1911 I think, and that covers the correction.

MR. BALDWIN: I offer this in evidence. 3539
Marked Petitioner's Exhibit 228.

Q. The last column here under the caption "Gross freight" that means in dollars and cents the gross amount collected here by the Hamburg lines? A. By us as agent for the Hamburg Line.

Q. Paid here, was it? A. Paid.

Q. Mr. Betts, the corrections that you wish to make to this statement of yours, you refer now to your testimony on pages 1460 and 1461 of the record; look at that and see if that is what you want to correct? A. Yes, sir. 3540

Q. Mr. Betts, you were also asked to prepare a statement showing the number of bags of coffee? A. Yes.

Q. Number of pounds of rubber and number of pounds of miscellaneous freight from Brazil to New York for each of the years 1908 to 1912 inclusive; have you got that? A. My statement does not cover rubber, but I do not believe we carried any; it covers miscellaneous freight and there is a resume of it. (Presenting paper to Mr. Baldwin.)

Q. This statement, you say, does not include rubber, and is it your understanding that you did not carry any rubber? A. Practically none.

3541 MR. BALDWIN: I offer this in evidence.
Marked Petitioner's Exhibit 229.

Q. Does your line frequently charter boats for the Brazilian trade? A. Frequently.

Q. And is this charter made for the joint account of all these conferences? A. No, for the Hamburg Lines.

Q. Only? A. Only.

Q. Don't you sometimes charter for joint account of all the lines? A. I think there have been one or two boats
3542 taken on that basis.

Q. Not more? A. I don't think so.

Q. Do you remember what years they were? A. I do not.

Q. Don't sometimes the other lines charter for the benefit of the conference lines jointly? A. I was referring then to the conference as a whole.

Q. Does your line frequently charter for the joint account of the conference lines? A. No.

Q. When there is any charter made, that is the chartering of any boats by the outside lines of any kind or any
3543 outside lines, is that charter consummated by the New York conference or is it made by someone of the agents of the conferees? A. You mean the extra boat?

Q. Yes; if you charter an extra boat, yes, just that? A. It is made by one of the principals.

Q. And for the benefit of all the others? A. For the benefit of relieving the berth

Q. Is there any arrangement that has obtained here in this Brazil business of the conference whereby Funch, Edye & Company get any kind of a commission or stipend
3544 or payment for the chartering that they do for the benefit of the conference? A. No arrangement is made. If they happen to be the chartering broker they get the usual chartering broker's commission.

Q. Supposing that the Hamburg Line happened to be chartered, do they get it, too? A. They do it through a broker.

Q. Then if the Hamburg Line charters they get no brokerage direct; that is paid to a broker? A. To a broker.

Q. But if Funch, Edye & Company charter for the account of the conference they act as broker as well as agent

for the line, is that it? A. They are the loading agents of 3545
the line and they would not probably sign the charter party; it would be signed by the Hamburg Line.

Q. Doesn't Funch, Edye & Company ever charter direct for the Prince Line? A. For the Prince Line?

Q. Yes? A. Well, I don't think they have, because the Prince Line have run the service with their own boats; but if they were in need of a boat and we had a boat that was suitable to them there is no reason why we should not charter to them as well as any other broker would.

Q. That is to say, if the Hamburg-American Line had an 3546
excess of tonnage and the Prince Line had a scarcity of tonnage, and they wanted to charter they would charter then from the Hamburg-American Line? A. They might.

Q. In that case then who would sign the charter party? A. Probably Funch, Edye would sign the charter party as agents for the owner of the ship, and the other principal would sign the charter party.

Q. I don't think you quite understand my question. If the Prince Line was short of steamers and the Hamburg-American Line was long of them? A. The Prince Line
would sign their own charter party. 3547

Q. Who would sign it for the Prince Line? A. Paul F. Gerhard as agent for the Prince Line.

Q. And who would sign it for your line? A. Funch, Edye would sign it as brokers by the authority of the owners of the ship

Q. And then who would get a commission? A. A brokerage, yes.

Q. So then it would appear in that circumstance in a dual capacity, broker and as agent as well? A. No, they
would not be agents for the ship, because Gerhard would 3548
be the agent of the ship.

Q. That is what I want to get; I want to be clear about that. Now, does any other of the conferees charter their boats directly to any of those in the conference? A. It never has been done that I recall.

MR. KIRLIN: You mean by anybody?

THE WITNESS: By any of the lines.

The witness desires to correct his testimony at page 1441 and 1442 of the record with reference to the rate of sewing machines as follows: On September 28th, 1910,

3549 the rate on sewing machines was advanced 25c to Rio and this rate remained in force until the revised tariff was issued in March, 1912, when the new rate of 18c was established.

Mr. Baldwin offers in evidence page 49 of exhibit 213 for identification, the Brazil tariff.

Received in evidence as Exhibit 213-a.

Mr. Baldwin also offers in evidence page 51 of Exhibit 213 for identification, Braizil tariff.

Received as Exhibit 213-b.

3550 Mr. Baldwin also offers in evidence page 41 of Exhibit 3 for identification.

Received as Exhibit 3-a.

Hearing adjourned to Friday, June 6th, 1913, at 10 o'clock A. M.

New York, June 6, 1913.

Hearing resumed pursuant to adjournment.

3551

APPEARANCES:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin, Esq., and M. W. Maclay, Jr., Esq., for the Prince Line, et al.

MESSRS. SPOONER & COTTON by J. C. Spooner, Esq., for Paul Gottheil, et al.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles C. Burlingham, Esq., and Charles
3552 Burlingham, Esq., for Frederick T. Busk, et al.

WILLIAM G. SICKEL, being first sworn, testified as follows:

DIRECT EXAMINATION by Mr. Baldwin:

Q. Where do you reside, Mr. Sickel? A. My home is in New Jersey, Short Hills.

Q. Are you in business here in the city? A. Yes.

Q. What is your business? A. Vice-director in charge of the freight traffic and part of the operating of the Hamburg-American Line.

Q. That means the Hamburg-American Line and Ham- 3553
burg-South American Line? A. The Hamburg-American are the general agents of the Hamburg-South American.

Q. In that respect then you represent both lines? A. I do.

Q. You say you are resident managing director? A. I am one of the resident managing directors.

Q. How long have you held that position with the Hamburg Line? A. I have been vice-director since last November.

Q. And prior to that? A. I was employed in the company 3554
as assistant to the general manager.

Q. And you held that position how long? A. Since January 1st, 1906.

Q. I suppose that you were more or less actively engaged in the affairs of the Hamburg Line in the Brazilian trade? A. My work there is only supervisory.

Q. In that capacity then you were entirely familiar with the general line and scope of their business and have been since 1907 I assume, or 1906? A. No; my jurisdiction over the Brazil business did not begin until the Spring of 1909. 3555

Q. Prior to that time while you were assistant to the general manager—— A. Yes.

Q. Did you have more or less supervision of the business of the Hamburg Lines operating in the Brazil trade? A. Prior to the spring of 1909 I had nothing whatever to do with the Brazil business; subsequent to that I have had supervision over it.

Q. Who did have the supervision of it prior to 1909? A. The position was then occupied by Mr. Charles Stewart, who is no longer in our employ.

Q. Do you know where he is? A. He lives in Boston. 3556

Q. Do you know his address? A. Yes, care of the Cunard Line.

Q. The Hamburg-American Line have their own office here in New York, haven't they? A. Yes.

Q. And their freight business is handled and has been for sometime by the firm of Funch, Edye & Company? A. Certain branches of it.

Q. And refers more particularly to the Brazilian trade? A. The detail, the booking of the cargo and the loading of the ships is handled by Funch, Edye & Company for account of both the German Lines.

3557 Q. Do they make reports directly to the office here, or to the Hamburg office? A. They make reports to our office.

Q. That is to say, the amount I suppose that is booked, the freight carried and the returns are made to your office here? A. Yes.

Q. And they get their compensation or commission from the office here? A. They get it out of the freight.

Q. Do they deduct their commission and expenses and remit the balance to the Hamburg-American Line here? A. I don't know.

3558 Q. Don't you know how they get their compensation for acting as general freight agent? A. Whether they deduct their commission from the freight and remit the balance to us, or whether they make a claim on us for their commission at stated intervals in a detail that I don't know.

Q. Do they consult your office in advance with reference to any of the contracts that they make with shippers? A. They have at times I know, but I do not follow the details sufficiently closely to answer that question as to the extent to which they consult us.

3559 Q. Have you enough recollection about it to state in what instances you have appertaining to the kind of contracts and with whom? A. I have no doubt that they consult the gentlemen who have charge of that department frequently without my knowing it, but it is very infrequently that any of those enquiries are brought to me.

Q. Who is that gentleman? A. Our business is organized with a freight traffic manager and he has an assistant, and that assistant has a department manager who looks after that branch of the business.

3560 Q. Who would be the person who would know the facts with reference to when and how and how often Funch, Edye & Company would consult the home office here of the Hamburg-American Line with reference to making arrangements for freight? A. I think Mr. Herbert Boas would be most familiar in our organization with that.

Q. Now, Mr. Sickel, paragraph four of the traffic agreement between the conference lines, which is Exhibit 1 in this case, provides that the Hamburg Lines should withdraw their service to New Orleans, the trade to that port to be maintained only by steamers of the Lamport & Holt and Prince Lines. Now, do you know what service that was that the Hamburg Line withdrew from in New Orleans? A. No, I do not.

Q. I suppose you are more or less familiar with this 3561
agreement? A. I am.

Q. Who is there here connected with the home office who would know what service there had been theretofore and subsequently withdrawn? A. I don't know of anybody.

Q. Where would that information be lodged? A. Well, as I have before stated that business came under the jurisdiction of Mr. Charles Stewart, who is no longer in our employ, and whom I could recommend to you to supply that information I don't know.

Q. Won't your books here show what the course of busi- 3562
ness was and the amount of business that was transacted in and from New Orleans? A. In 1907?

Q. Yes, and up to the time that the Hamburg Line actually did withdraw? A. It might, but I doubt whether we could locate anything in our records as to what the service was then.

Q. I suppose that information could be found at the home office at Hamburg, couldn't it? A. I presume so, unquestionably.

Q. Well, you know as a matter of fact that the Hamburg 3563
Line had been operating their boats to New Orleans up to the time of this agreement and after it was made they were withdrawn, don't you? A. I don't know that.

Q. Have you an agent at New Orleans? A. Yes.

Q. Did you have an agent there in 1907? A. Yes.

Q. Do you know what his name is? A. Our agency at that time in New Orleans was the Texas Transport & Terminal Company; in fact, they are still our agents.

Q. Is it entirely probably that the information that I am now asking for with reference to the New Orleans business as transacted by the Hamburg Line could be found 3564
there? A. It might be.

Q. You do know as a matter of fact that since 1908 the Hamburg Lines have not operated in the New Orleans service? A. They have not operated to New Orleans since I have had anything to do with that branch of the business.

Q. That is since 1909? A. Since April, 1909.

Q. But prior to that time you are not definitely informed? A. I could not state from knowledge.

Q. Paragraph five of the same agreement, Exhibit 1, provided that "rate of freight on coffee be fixed in conference at the highest possible level, no alterations to be made

3565 therefrom except by mutual agreement''; now, where was the rate on coffee from Brazilian ports to American ports made? A. I can only answer that negatively; it is not made in New York.

Q. Is it your best information that it was made in the London conference? A. I don't know where the coffee rates are made.

Q. Mr. Sickel, am I to understand that such an important feature of the business of the Hamburg-American Line in conjunction with the other conferees as the coffee trade is
3566 not a matter of more or less general information among all of these conferees and their principals, as to where the rate is made? A. I can give you no further information than what I have given you.

Q. Do you mean to say that you actually don't know where they are made, even by common knowledge? A. I have an idea where they are made, but I have no positive knowledge.

Q. What is your information on that subject? A. My information is—my belief is that coffee rates are made abroad.

3567 Q. I know, but where abroad? A. I don't know.

Q. Do you know whether it is made by the London conference of these lines? A. No, I don't know.

Q. Well now, who is there in your office who would know that? A. Nobody that I know of.

Q. Does that information also have to be obtained from Hamburg? A. To be absolutely authentic we would have to get it from Hamburg, any information.

Q. Doesn't Mr. Gottheil know? A. I don't know what Mr. Gottheil knows.

3568 Q. Were you present at the meetings down before the Committee of the House of Representatives where Mr. Gottheil testified? A. I was not present when he testified.

Q. Did you ever read his testimony? A. In a very superficial way I did.

Q. You never talked with him or anybody else about where the coffee rates were fixed? A. I cannot recollect talking with anybody on that subject.

Q. Did you ever attend any of the London conference meetings? A. No, sir.

Q. Did you ever attend any of the New York conference meetings? A. I attended two or possibly three of them, just after I took hold of that end of the business.

Q. Where are, as far as the Hamburg-American Lines 3569
are concerned, the rates of freight on coffee paid? A. I don't know.

Q. Do you know whether it is paid here or not? A. I said that I didn't know.

Q. Do you mean to say that you don't know accurately, or whether you have no information on the subject? A. I don't know accurately; I have an impression of where it is paid.

Q. What is your best impression on the subject? A. That it is paid here. 3570

Q. Directly to Funch, Edye & Company, or directly to you? A. Directly to Funch, Edye & Company.

Q. Coffee rates have fluctuated from time to time, haven't they, since 1909, since you have held this position? A. Our records show that we have collected different rates at different periods. It shows that the rates have fluctuated.

Q. And you never thought it worth while to enquire where those rates were made or why they fluctuated? A. No. 3571

Q. This same paragraph five, among other things, provides that the rates of freight on all other articles excepting on sugar from northern ports also to be agreed upon and adhered to; now, do you know where those rates were agreed upon? A. What is that? Northbound or southbound?

Q. This is the northbound? A. I don't know.

Q. Do you know where the rates upon sugar from the northern ports were determined? A. I do not.

Q. Do you know how the rates upon coffee are fixed? A. 3572
I do not.

Q. Now, Mr. Sickel, paragraph six provides that a rebate system is to be established on the same scale as in force for Hamburg by which the shippers are required to confine their shipments to the United States and Antwerp, Rotterdam, Amsterdam, and Hamburg and Bremen to the steamer or parties to this agreement, or to other lines which may be in conference with the Hamburg Line in their Brazil-European service; now, what other lines were in conference with the Hamburg Lines in the Brazil service at this time? A. To what country?

Q. I don't know. If you will just look at the paragraph

3573 which is there you will see the scope of my question? A. I would interpret that as meaning conference lines from Brazil to Europe and conference lines from Brazil to the United States.

Q. Yes. Well, now, who constituted the conference lines from Brazil to Europe or Europe to Brazil? A. I don't know them.

Q. It says further in the same paragraph "An agreement, if possible, to be made with the Royal Mail Company and the Chargeur Reunis or other lines under which
3574 the shipments to Havre and London may be brought within the same rebate system." Do you know whether such agreements were made? A. I do not.

Q. Mr. Sickel, I show you Exhibit 11, "Notice to Shippers From Santos," Exhibit 12, "Notice to Shippers From Rio and Victoria" and Exhibit 13 "Notice to Shippers From Bahia"; if you will just look at those you will notice that they are signed, Exhibit 11 by the Royal Mail Steam Packet Company, the Hamburg-American Line, both of the lines, and the North German Lloyd and the Lamport
3575 & Holt Line; Exhibit 12 by the four conference lines in this city, and Exhibit 13 likewise. Now, by examining them can you tell whether or not, or will it refresh your recollection in any way so that you can state whether or not, any agreement was made with the Royal Mail Steam Packet Company concerning rebates? A. I have no knowledge of it.

Q. That does not refresh your recollection? A. Not a bit.

Q. Have you any knowledge, any general knowledge, of what lines the Lamport & Holt, the Prince Line and the
3576 German Lines have agreements with or understanding with reference to the establishing or fixing of rebates from Europe to Brazil, or return, or both? A. I have no knowledge on the subject.

Q. Where are the number of sailings and the time of the sailings from Brazil to the American ports fixed for your line? A. Fixed by Hamburg, sometimes in consultation with us.

Q. And the agreements between your lines and the Lamport & Holt and the Prince Line with reference to sailings homeward? A. Homeward I cannot answer.

Q. Of course, you know that they are fixed outward,

don't you, by this agreement? A. I understand they are, 3577
yes.

Q. Isn't it also your understanding as to the agreement of the sailings homeward being under agreement? A. No, I do not know that.

Q. Is it your understanding that the sailings northward from Brazil to this port by the conferees' boats is determined by either the New York or the London conference? A. I know they are not fixed by the New York conference.

Q. The sailings to Brazil are not fixed by the New York conference either, are they? A. No; I should say that that 3578
was fixed from abroad.

Q. You mean by abroad the London conference, don't you? A. I wouldn't say London conference. In matters of that kind we correspond, not with the conference, but with our principals in Hamburg.

Q. Mr. Sickel you have a very more or less general idea about what is transacted by the London conference of these lines, these conferees? A. My knowledge of the London conference consists of seeing the copies of cables that are exchanged between the New York conference and the 3579
London conference.

Q. That is all? A. That is all I know.

Q. It was never discussed with any of the other conferee agents here what was transacted or what was done at the London conference? A. I come into contact with them very little.

Q. Doesn't your lines receive copies of the London minutes? A. I have never seen them.

Q. If copies of the London minutes were sent to the Hamburg-American office here to whom would they go in 3580
due course of business? A. They would come to me, at least, if they were not sent direct to me the men in the department who have charge of the Brazil business would unquestionably bring them to me.

Q. And do you mean to say that you have never seen them? A. I don't recollect seeing ever any London minutes.

Q. Do you know whether or not the minutes of the London conference are sent to the home office at Hamburg? A. I have no knowledge of what goes on abroad.

Q. Do they ever consult you about the details? A. Details connected with the London conference?

3581 Q. Yes, with reference to the management or direction of the Brazil trade respecting its rates? A. We have a great deal of correspondence with Hamburg with regard to sailings and rates and other matters connected with the business.

Q. Then, if you have correspondence with reference to the sailings do you mean to say it has never been brought to your attention about how or where the sailings are arranged for from Brazil to the American ports? A. From Brazil to an American port?

3582 Q. Yes? A. I can't recollect having seen any correspondence on such a subject.

Q. You know, do you not, that the Hamburg-American Lines have conference agreements with reference to the traffic and the rates from Hamburg and the Continent with other vessels? A. To Brazil?

Q. To Brazil? A. I don't know it absolutely.

Q. You understand it to be true, do you not? A. I do.

Q. And you understand that to have been true for a number of years? A. My knowledge of that business cannot go back beyond the spring of 1909.

3583 Q. You have no knowledge of any conditions prior to that time? A. Only in a very superficial way. I am bound in the department that I am connected with to absorb some of the atmosphere surrounding it.

Q. Have you absorbed enough atmosphere to state whether or not that is true, that there has been a conference for a number of years? A. I have, I believe there is.

Q. And among those conferees were the Lamport & Holt Line? A. Who were the members of that conference I have no knowledge.

3584 Q. Do you know who were members of the conference since 1909? A. From Europe to Brazil?

Q. Yes? A. I do not.

Q. I suppose again you are having in your mind absolute certain information; what is your general knowledge of it? A. I seem to have gathered some knowledge here as to who are members. I don't know anything beyond that. I have never enquired as to who the members of the conference were.

Q. Is it your general recollection or any impression that the lines that were engaged in European conference with Brazil were your lines, the North German Lloyd, the Lam-

port & Holt and the Prince Line? A. I have never given 3585
any thought as to who the lines were that composed the European-Brazil conference.

Q. Never had any conversation with any person as to who constituted it? A. No, not that I can recollect.

Q. Have you ever heard the matter discussed in your presence? A. I have no recollection.

Q. Mr. Sickel, before you went to Washington to testify before the Committee of the House, the Committee on Merchant Marine and Fisheries, with reference to this general aspect of the conference lines' business, didn't you use any 3586
means at all to ascertain what the conferences were and who constituted the conferences? A. Which conferences?

Q. The Brazil conference and also the European conferences, that were in association with them? A. I made no effort.

Q. Your lines here have copies, have they not, of the notices that were sent to shippers at these various ports in Brazil affecting rebates, such as these exhibits I have identified a moment ago, numbers 11, 12 and 13? A. If our office has copies of those it is not to my knowledge.

Q. Here is a copy of a memorandum of agreement that 3587
is already in evidence, Exhibit 200? A. That refers to coffee?

Q. It does; and the rebates, and while not signed its caption is that of the Royal Mail Steam Packet Company, the Hamburg-South American Company and the Hamburg Company and the North German Lloyd and the Lamport & Holt and Prince Line. Didn't you have a copy of that among your files? A. This is a copy not in our files; it is not to my knowledge.

Q. Have you any copies of conference agreements in 3588
your possession or under your control or in your office here made by the Hamburg-American Line with any other lines affecting the Brazil trade either for the United States or to Europe? A. We have a copy of that original agreement.

Q. You mean this one here in suit? A. Yes.

Q. Any others? A. Not that I can recollect. If there was I don't recollect them.

Q. Mr. Sickel, will you make an effort to ascertain? A. You want me to find out what agreements I have connected with the New York-Brazil trade?

3589 Q. And the Brazil and European trade; that is where it is affecting rebates.

MR. SPOONER: You mean shipments between European ports and Brazil?

MR. BALDWIN: Yes.

Q. And also, if you have any correspondence—Mr. Montgomery suggests—that accompanied these copies of conference agreements, assuming that you have it; you will produce those likewise? A. I will produce all that I have.

3590 Q. I show you Exhibit 158, here, which is the printed book entitled "Minimum Tariff of Rates of Freight from U. K. Ports and Continental Ports, between Antwerp and Hamburg to Cabedello, Pernambuco, Maceio, Bahia, Victoria, Rio de Janeiro and Santos," under date of March, 1912. Now, the names of the companies that adopted this, or the parties to it, are not on the exhibit; can you state what lines adopted that or used it? A. I cannot.

Q. You know that the Hamburg Line is one of them, don't you? A. I do not.

3591 Q. Did you ever see this printed tariff book? A. Never before.

Q. Now, Mr. Sickel, reverting for a moment back to the report made by Funch, Edye & Company to your home office here, do you know whether or not there is any arrangement by which the Hamburg-American Lines in the Brazil trade outward is to have any definite or fixed proportion of the freight that offers?

MR. KIRLIN: Do you mean sailings?

MR. BALDWIN: The amount.

3592 MR. KIRLIN: The volume of goods? Which?

MR. BALDWIN: Volume?

A. I think that is covered in this original agreement, that from July, 1908, to July, 1909, there was to be a pool and subsequent to that a traffic agreement.

Q. What I want to ascertain is what agreement, if there was any agreement, by which the Hamburg-American Line got any definite proportion of the amount of freight shipped? A. Among the conference lines?

Q. Yes? A. I don't know of any agreement existing now.

Q. Not since 1909? A. Not since the pool agreement ex- 3593
pired.

Q. Do you know whether or not there is any understanding or arrangement outside of any written agreement? A. Between those three lines?

Q. Yes, by which they are to get, or more particularly, your lines are to get a definite proportion of the freight? A. I know of no agreement among the three lines that apportioned the business among them as existing to-day.

Q. Can you state whether or not regardless of whether there is a fixed agreement that the business is so arranged 3594
and so managed that each line gets a proportionate share of the business? A. I have no knowledge that would indicate that that is so now.

Q. You testified a while ago that sometimes you would be consulted here about the making of contracts by Funch, Edye & Company; do you remember that? A. Yes, I remember that.

Q. What kind of contracts would you be consulted about? A. Well, sometimes when they are having difficulties to come to a conclusion with regard to a basis on which a con- 3595
tract is to be made, Funch, Edye & Company would put it up to some of our department managers, and if in their estimation it was a matter of sufficient importance they bring it to me, and I would weight the facts and give them the benefit of my judgement in the matter.

Q. Would your judgment be controlling? A. It would as far as our own lines were concerned.

Q. That is to say, as far as the Hamburg-American Lines are concerned your judgment would be a determination and then whether it would finally be adopted would de- 3596
pend upon the other conference lines, is that the idea? A. That is correct.

Q. You say upon the basis of these agreements, the basis of it would be submitted to you; what do you mean, the rates? A. It might be rates as well as conditions.

Q. It is very frequently the rates, I presume, or sometimes? A. Of course, if it was rate entirely it would be largely in the hands of our people abroad, because they determine the rates.

Q. Does your home office here have any authority here whatsoever to authorize Funch, Edye & Company to agree upon a concession from the tariff rates, or the rates that

3597 have been arrived at in the conference? A. No, because we have that authority ourselves.

Q. I am saying you haven't got that authority? A. No.

Q. If Funch, Edye & Company had in the course of business an offer of merchandise to be shipped at a rate less than, we will say, than the conference rate, would it in the course of business come first to you and then through you to the home office, or would they get their authority direct from the home office? A. When you say you, do you mean me personally?

3598 Q. When I say you, of course, I mean your lines? A. My observation of it is that if Funch, Edye & Company are in doubt as to whether or not a rate shall be, or an offer shall be submitted to the home office, they generally consult us and whatever is determined upon is put through from one conference to the other.

Q. You mean the New York conference with the London conference? A. With regard to rate matters.

Q. But assuming that it should be passed upon in any way by the New York conference, Funch, Edye & Company

3599 would have to get instructions from the home office first?

MR. KIRLIN: You mean the New York office?

A. I am not clear as to that question.

MR. BALDWIN: No, I mean Hamburg.

MR. SPOONER: Directly you mean?

MR. BALDWIN: I don't know. We are coming to that whether directly or through him.

Q. (Question read.) I mean the home office in Ham-

3600 burg? A. I don't believe I grasped the question.

Q. Assuming that an offer had been made upon a commodity like oil or flour, or any of the articles other than staple, Funch, Edye & Company could not in any way bind the Hamburg-American Line—I mean in conference they could not bind them without first getting instructions from the home office in Hamburg, could they? A. That is not the way the business is handled.

Q. I am asking you that? A. Well, then, I have answered it. That is not the way it is done.

Q. Well, when a shipper makes an offer which is less than the established rate, and it refers to, or assuming it

might be upon something that the New York conference could determine separate and distinct from the London conference, would Funch, Edye & Company first be compelled to get instructions from the Hamburg office so far as your lines are concerned? A. If they were entertaining an offer they would consult the other members of the conference here and if, in their judgment, the offer should be submitted the conference here would submit the offer to the conference in London. 3601

Q. Then Funch, Edye & Company would not be under those circumstances required to consult the Hamburg-American office here at all, either here or abroad? A. They would not abroad, but they would unquestionably consult with us if it was a matter of some importance. 3602

Q. In other words, before they could bind the Hamburg-American Line in conference as I put it a moment ago, they would have to get their instructions from the Hamburg office here; do you catch my meaning? A. I think I have got your point. We leave a great deal of that to their judgment.

Q. But, do you still exercise the right to instruct them in that matter? A. Absobutely. We consider ourselves here the senior authority. 3603

Q. Do you know whether or not the German Lines, meaning your lines, are in traffic to the Brazilian ports receiving any subsidy from the German Government? A. I don't know.

Q. Do you know whether they receive any advantage by concessions from the rail rates or schedules in Germany affecting merchandise to go by the Hamburg Lines?

MR. SPOONER: Is that covered by this petition? 3604

MR. BALDWIN: I don't know whether it is or not.

MR. SPOONER: I object to it as incompetent and not being within the issues, and immaterial.

Q. Do you know? A. The German Railway Lines name special rates for expert goods, which are open to the flag of any steamer.

Q. Do you mean any German steamer or any German flag? A. It is not confined to any particular German Line, or to the flags of any particular nation; just as with your country our railways name export rates that are different from their domestic rates.

3605 Q. What you mean to say by that, that those rates named would apply and do apply to the vessel of any line of any nation? A. That is my understanding of it.

Q. Do you know of any advantage of any kind that the Hamburg-American Lines get over any other line that operates in the Brazil trade? A. From New York?

Q. Yes, from New York. A. I don't know of any special advantages that they have over any other line operating from Germany to Brazil.

Q. You say you don't know whether it receives a subsidy or not from the German Government? A. I do not.

3606 You asked me with regard to both German Lines, did you not, Mr. Baldwin; you said the German Lines?

Q. Yes? A. Meaning the Hamburg-American Line and Hamburg-South American Line trading from Germany to Brazil?

Q. Yes, Brazil? A. Well, I have answered the question.

Q. Do you know whether or not that shipments moving by rail to Hamburg and destined to the Brazilian ports over the Hamburg-American Lines are charged a less rail rate than other shipments destined for other

3607 ports? A. I cannot give you the details with regard——

Q. I am not asking you for details. Do you know generally whether that is true; I am not pinning you down to an exact answer? A. As far as I know they have no preferential treatment, nor has Brazil any preferential treatment.

Q. That is the point; is there any preferential treatment or advantage for merchandise offered to the Hamburg Line consigned or destined for Brazilian ports? A. I know of none.

3608 MR. SPOONER: That is from Hamburg?

MR. BALDWIN: Yes.

MR. SPOONER: I move to strike it out as immaterial and incompetent and not being within the issues of this case.

Q. Mr. Sickel, would you know when and if concessions were made to the German shippers upon merchandise to the Brazilian ports in advance? When and where?

Q. Yes? A. I have no knowledge on the subject.

Q. Did you have a general knowledge of what the rates were from Europe to Brazil? A. Not the faintest.

Q. There is evidence here in this case already to the effect 3609
that the American shipper would get the same rates as the European shipper to the Brazilian ports, and there is likewise evidence to the effect that the concessions upon contracts would be made in Europe and likewise evidence that it was frequently done here? A. Where is that evidence?

Q. In the evidence of various witnesses here. Now, assuming that the concessions were made from time to time to the European shippers by your lines or the European conference, would you be informed of that here?

MR. KIRLIN: Before you answer that, I have no 3610
recollection of any such testimony, that concessions were made to shippers in Germany.

MR. BALDWIN: The evidence is here that the concessions were made. One of the witnesses was asked that question and I am not sure whether it was Daniels or whether it was Mr. Gerhard.

MR. KIRLIN: Counsel for the defense have no recollection of any evidence that concessions were made under contracts or otherwise upon the tariff from Germany to Brazil, and they except to the 3611
statement of counsel that there is testimony, and reserve an exception to the statement of counsel that there is testimony in the record to that effect.

Q. Do you know whether or not the concessions were made to the German shippers by the conference lines including yourself? A. I do not.

Q. When they made time contracts? A. I do not.

Q. Or specified contracts, you don't know that? A. I do not.

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Q. Do you know it generally? A. My knowledge——

Q. You can answer that question yes or no, whether you know it generally or not? A. I cannot answer that question that way.

Q. Then go ahead and answer it in your own way? A. My knowledge of the fact that the rates are uniform from Europe to Brazil against United States to Brazil is the not infrequent complaint made by American shippers that European shippers are getting some concession. We put that up to our principals for enlightenment and I cannot recollect the cases where the shippers, the American shippers' position or statements has been substantiated.

3613 Q. Now, what I want to bring out is this: if, assuming now that the concessions are made to the German shippers to Brazil, or shippers on the Continent, or from the United Kingdom to Brazil, assuming that, would your office be notified here of those concessions? A. I cannot answer that specifically. I can only give you my belief.

Q. What is your general understanding about it? A. I think they would or that they do.

Q. They do notify you? A. That is my belief.

Q. Is that belief founded upon the specific facts that have
3614 been called to your attention? A. That information comes to me largely through my department managers, who endeavor to keep me posted with regard to the more important correspondence that goes on, because I do not read all of the mail that comes into our office, it is a physical impossibility.

Q. Then your belief is that you would be notified and it necessarily follows that those concessions have been made, doesn't it? A. It might be made without coming to my knowledge. That is the information may come from
3615 abroad to us here that the concessions have been made, which I would have no knowledge of, because it would not be a matter of sufficient importance to bring to my attention.

Q. Have you any belief, founded upon any facts that have come to your knowledge, as to when you would receive the information of that concession? A. No, I have none.

Q. Mr. Sickel, do you recall whether or not your attention was called by any persons in your office to the offer of a shipper by the name of Hasenclever of a large number of
3616 barrels of cement? A. That was never brought to my attention.

Q. You never knew anything about it? A. Nothing.

Q. Or the cables with reference to it? A. I very frequently see the cables exchanged, but I have no recollection of that.

Q. Mr. Sickel, I show you page 1492—I will read it; Mr. Betts testified at a recent hearing, at page 1492 of the record, that he was shown a cable which read as follows: "May 25th, 1910, Braconfer, London. what rate may we quote Hasenclever 50,000 to 75,000 barrels cement Rio 25,000. 40,000 Santos dead weight tonnage 16,000 tons ship-

ments within twelve months," and that he was finally au- 3617
thorized to quote a rate of 22 shillings six pence to Santos, 20 shillings Rio, and it appears that there is another cablegram to London as follows: "Braconfer, London. Referring to your telegram of 31st are informed that European rates large lots 15 shillings Rio de Janeiro f. f. a., Santos 7 shillings 6 pence may we quote same." Now, did those cables come under your cognizance? A. I do not recollect.

Q. And having had them read to you you have no recollection about that transaction at all? A. Absolutely none. 3618

Q. You have no recollection of having been informed by your home office or any other person that there was a difference in the rates from Europe to Brazil on cement other than that obtained here at the same time? A. At that particular time?

Q. Yes? A. I have no recollection of it.

Q. Do you know whether or not the New York conference here is informed by the London conference when and to whom and how concessions are made to shippers every month? A. How and to whom and what the con- 3619
cessions are?

Q. Yes? A. I cannot answer that.

Q. Do you know whether or not they informed your conference anything about concessions at all to European shippers? A. That is the London conference does?

Q. Yes? A. Well, all I know is that I see from time to time some of the cables exchanged between the two conferences.

Q. Having that in mind do you know now whether or not the London conference informed the New York conference of any concessions that were made to individual shippers? 3620
A. I cannot recollect the details of those cables.

Q. Then you cannot answer that question, can you? A. I cannot.

Q. Do you remember of the offer of Neuss & Hesslein to your company of cement? A. I do not.

Q. Do you know of the fact that they had learned of concessions to Europe shippers on cement to Brazil and indicated that fact to your office? A. I did not know of it.

Q. Had your office been notified about the time of the Neuss-Hesslein offer, which was sometime in February

3621 I think it was of the present year, that there was a rate from Europe to Brazil on cement that was less than that which obtained from here to Brazil on cement? A. If our office was advised of it?

Q. Yes? A. I had no knowledge of it.

Q. Before you became the head or the managing resident director here were you ever engaged as a freight agent in soliciting freight for the Hamburg Lines any place? A. Yes, I was in Chicago.

Q. What years, Mr. Sickel? A. Well, it was prior to
3622 1906. Prior to January 1st, 1906.

Q. For how long were you there? A. I was the western freight manager of the International Mercantile Marine Company in Chicago, and they had the freight agency of the Hamburg-American Line, and that was my indirect connection with the Hamburg-American prior to January 1st, 1906.

Q. I suppose that you are more or less familiar with where the inland freight that goes by the conference lines originated? A. Yes, I have some knowledge of it.

3623 Q. General speaking, what proportion of the freight that goes to Brazil originates inland? A. I have no accurate knowledge of any percentage.

Q. Is there a large percentage of it? A. What do you mean by inland?

Q. Freight that does not originate in New York, but comes from various points in the United States to New York to be shipped to Brazil? A. I see. I cannot give you any data on it; I don't know. If you will ask me specific commodities I can tell you, but I cannot lump the whole freight and tell you what percentage originated in
3624 New York.

Q. Can you tell me what class of commodities that comes to New York are shipped on these conference lines that originate in the south and southwest? A. Resin, lumber, flour, provisions; that is all I can recollect at the moment.

Q. Where does resin come from mostly? A. It comes from the south.

Q. In what particular states? A. It is produced in North Carolina, Georgia, Alabama and all portions of the south where the pine trees grows.

MR. SPOONER: Florida sometimes?

THE WITNESS: Yes, I think some of it comes from Florida. 3625

Q. Any flour come from the southwest? A. We handle flour by way of New York from the southwestern points; whether that flour goes to Brazil or it is flour from the northwest I don't know.

Q. You know that flour comes to your line, do you not, to be shipped to Brazil? A. Yes.

Q. And what parts of the southwest does it come from generally speaking? A. I have never enquired on that. 3626

Q. Where does the lumber come from? A. All the lumber that is exported from this country comes from the more southern sections of the country.

Q. Does it come from Alabama and Georgia, any come from Mississippi and Louisiana? A. The lumber that comes up here?

Q. Yes? A. I have no knowledge on that.

Q. But you do know that a large amount of lumber that does come here comes from the southern states? A. All the lumber that we get comes from the points south of the Ohio River. 3627

Q. Don't you know generally speaking that most of it does come from Georgia and Alabama? A. The lumber that is exported?

Q. Yes? A. No, that is not so.

Q. Don't you know whether a large amount of it comes from there? A. Are you talking about the shipments to Brazil?

Q. Yes? A. I don't know where the shipments of lumber by our line to Brazil originate.

Q. Or the conference lines? A. Or the conference lines. 3628 I can give you in a general way where lumber and logs originate in this country for exports.

Q. Well, I don't care for—I am now speaking if you have any knowledge of what proportion of the lumber that is exported to Brazil comes from the southern states contiguous to the Golf ports? A. I don't know where that originates by our line.

Q. What other commodities come from the southwest and the south other than those that you have mentioned? A. I said in my evidence that those were all that I could recollect.

901

3629 Q. You have some men in Chicago that solicit freight for your line? A. We have.

Q. I mean to go to Brazil? A. No, we have nobody in Chicago that solicits freight for Brazil.

Q. Brazil included with freight for other ports? A. We have an agent in Chicago who solicits freight for ports other than Brazil.

Q. But none that solicits freight for Brazil? A. Not for the Hamburg-American Line—not a Hamburg-American Line representative.

3630 Q. Is there any representative of the conference that solicits freight for Brazil? A. The conference has no representative in the west.

Q. Do you know how that freight is solicited, if at all? A. It is solicited through the Chicago representative of Funch, Edye & Company.

Q. Who represents them there? A. Mr. D. J. Donovan.

Q. Do you know does he also solicit freight for Brazil? A. He is Funch, Edye & Company's representative, so he must solicit freight for there.

3631 Q. Do you know what class of merchandise he obtains for shipment to Brazil? A. I do not.

Q. Who in your office would know about that, Mr. Sickel? A. There is nobody who would know in our office.

Q. The class of merchandise and where it originated would not be known by anybody in your office? A. I was answering the wrong question. I would like to correct myself.

Q. Very well? A. I understood your question to be who in our office would know what freight Mr. Donovan solicits in Chicago and to that I answer there is no one.

3632 Q. Is there anybody in your office who would know where the freight originates that goes by your line? A. Funch, Edye & Company are our representatives.

Q. Anybody in your office that would know about that? A. I don't know anybody in our office that would know it.

Q. Mr. Sickel, where are the rates for the outbound shipments determined? A. They are determined here in New York in conference. No, I would like to correct that. the outward bound rates are made from abroad.

Q. When you speak of abroad, do you mean the London conference? A. As far as I can see all the authorities for

advancing or reducing rates have come to us through the 3633
London conference.

Q. How are those rates determined? A. I don't know how they are determined. They are supposedly based on the European tariff.

Q. Do you mean to say by that that the rates that are established for the American shippers are based entirely upon the rates that had been in force and established for the trade from Europe to Brazilian ports? A. If it applies to similar goods.

Q. That is where it does apply to similar goods. Now, 3633
where it does not apply to similar goods, then where is it fixed? A. It is still fixed in London.

Q. Do you know upon what that is based? A. I do not.

Q. Is it established by the tramp rates? A. I told you that I didn't know.

Q. I want to be perfectly fair with you, Mr. Sickel, before you answer that. If you don't know I will call to your attention your testimony before this Committee of the House of Representatives; do you remember whether you stated there that your regular lines' rates were governed 3635
largely by the tramp rates? A. What trade was I talking about?

Q. Did you make that statement? A. If it is there I made the statement.

Q. Will you state whether or not the rates from here to Brazilian ports upon commodities other than in the European schedule are fixed at all or determined by the rate of tonnage here offered by the tramp steamers? A. It would depend upon the volume of the business whether it would be or not; or if not by the volume of business by the 3636
competition of lines not in the conference.

Q. Since 1908 have there been any lines engaged in the Brazilian business from New York, regular lines? A. Lloyd Brazileiro.

Q. Are your rates fixed then by the rates quoted by the Lloyd Brazileiro? A. On commodities that are not similar in shipments from Europe?

Q. Yes? A. I presume our agents keep us advised or keep the people abroad advised as to what the competition is, and that that influences them in making the rates.

Q. Do you know whether or not the rates are fixed by your people abroad upon the rates that the Lloyd Bra-

3637 zileiro adopt? A. I wouldn't say it was specifically the Lloyd Brazileiro competition that influences them in making the rates; it would be other conditions.

Q. Wouldn't the tramps affect that rate? A. If there was business enough, if the volume of the business was large enough, the tramps certainly would be an influence that we would have to recognize in making rates.

Q. Assuming that the tramps quoted a rate, a charter rate, for less than the Lloyd Brazileiro, would it be the Lloyd Brazileiro or would it be the tramps that would
3638 determine your rate? A. The probabilities are we would get a premium over the tramp; but the rate, actual rate, we could get would be finally influenced by the regular line of competition that is not in the conference.

Q. Then the rate would be fixed by this one regular line, the Lloyd Brazileiro; it is the only line, is it not, that is in the trade from here? A. Running regularly from New York.

Q. That is what I am speaking about; it is the only line? A. Regular line.

3639 Q. Yes. Now, the tramp would not fix your rate upon the package freight, would it? A. Yes, it will, because at Philadelphia we have competition by brokers who load tramps and that is package freight.

Q. Didn't you testify before the committee that—when I am speaking of package freight I am speaking of first class freight? A. I don't know what you mean by first class freight.

Q. Well, first class goods; do you understand what that means? A. No.

Q. Page 833 of the record of a hearing before this Com-
3640 mittee you were asked the question by Mr. Humphrey: "Now, on high class freight that would not be true, would it?" And you answered: "Why, of course, we handle a great deal of those commodities, and when we don't get them we take away the competition of our business and the rate drops in everything." Now, did you understand then what high class freight meant? A. Well, I understood it at that time to mean what we call measurement goods that pay us the higher rate of freight in contradistinction to the low class of freight, like flour and oil.

Q. Well, does the tramp fix the rate for what you mean by this measurement freight? A. The tramp does fix the

rate through the fact that outside brokers can gather these goods together, both high class and low class, chartering a steamer and work it against us. 3641

Q. How many instances of that nature have happened in the last year? A. Steamers have been loaded with locomotives and structual material from Philadelphia within a year or two in competition with us.

Q. How many? A. I don't recollect the number.

Q. Would you say there were as many as five within a year or two? A. It might have been; I cannot recollect.

Q. Isn't it your best recollection that the number of tramps that have been chartered or that have carried a miscellaneous cargo of any kind, either from Philadelphia or New York in the last two or three years are very few? 3642
A. To Brazil?

Q. Yes? A. Well, it is only a matter of comparison; a few may be a great many or may be a—three would not be a few out of five, but three out of a hundred would be a few.

Q. Will you say there were as many as six sailings of tramp steamers from Philadelphia within two years? A. I have no specific knowledge of any. 3643

Q. How would the fact that the tramp steamers were chartered in Philadelphia affect the rate from here?

MR. SPOONER: He didn't say that.

MR. BALDWIN: We will see what he says about it.

A. Repeat the question, please.

Q. (Question read.) A. Good coming from points in the interior could move by way of Philadelphia as easily as it could by way of New York; or goods from Philadelphia can be shipped to New York. 3644

Q. Can you mention an instance when the rate from New York within the last two years has ever been affected by the rates quoted upon any tramp steamers in Philadelphia? A. Information that has come to me from my department managers indicates that the business that formerly moved in connection with our line has been shipped by tramp ships from Philadelphia in the last two years.

Q. Now, the question is can you state whether or not within the last two years your rates here in any way changed because of the tramp rate in Philadelphia? A. Whether we met those rates or not I don't know.

3645 Q. If you did not meet the rates then they did not determine the rates from New York to Brazil, did it? A. We may not have met those rates because we did not need the cargo.

Q. Then it did not determine the rate from New York, did it? A. We passed it on and let the tramp have it.

Q. From Exhibit 212, Mr. Sickel, in 1911 there were none, and in 1912 two tramps from Philadelphia to the Brazilian trade. Now, assuming that to be true would you state seriously that two sailings of tramp steamers
3646 in two years would affect the rate of tonnage from New York to Brazilian ports? A. When steamers were on the berth it would have an effect upon us.

Q. On March 26th, Philadelphia to Rio, and July 27th, Philadelphia to Rio, and none in 1911. Now, have you any recollection at all whether or not in March and July, at the dates mentioned, that the rates from New York on any class of commodity were at all affected by what those two tramps charged? A. I don't recollect it.

Q. Well, generally speaking, Mr. Sickel, two casual sail-
3647 ings in two years would hardly affect the rate from New York, would they, to Brazil? A. Not when those ships were on the berth.

Q. And had you any knowledge—do any of your boats go to Philadelphia, your line boats? A. Not to Brazil.

Q. Then could you tell by looking at your records and manifests of the rates that obtained in those months whether or not they were changed either up or down for any reason? A. The manifest only expresses what the rate is, and the goods are booked long before they are shipped. So that we could not very well trace the influ-
3648 ence over such a short period as that by a manifest.

Q. By any source; I don't care whether manifests or rate or how? A. Our freight agents might, but we cannot.

Q. I suppose you could ascertain it from Funch, Edye & Company, couldn't you? A. I could ask them.

Q. Just bear in mind these dates, July 26th, 1912, *Rio Soracaba*, July 27th *Corozal*. Now, there has been an increase in rates, has there not since 1907? A. I had no jurisdiction over the business in 1907.

Q. Do you remember being interrogated by the Chairman of the Committee about the advance in rates in 1907? A. I was not talking about Brazil then.

Q. Are you familiar with the advance in rates to the 3649
Argentine? A. We operate no service from here to the Argentines.

Q. You were a witness before a Committee to testify as to these conferences in the South American Trade, weren't you? A. Not specifically South American trade.

Q. That was involved? A. That was one of many conferences that were discussed. You have the evidence before you.

Q. Do you know whether or not the rates have increased in the Brazilian trade since 1907? A. Our records show 3650
that they have.

Q. Does your records show what the per cent. of the increase is? A. Yes.

Q. What is it? A. I can give you the average rate per ton.

Q. That may be some light? A. You are talking outward now?

Q. Yes? A. In 1907 our average rate per ton was $5.68; in 1908, $4.75.

Q. Up to what time in 1908? A. Well, it is the average 3651
rate throughout the year.

Q. Did you embrace in making that average for 1908 the rate that you charged while you were not in conference and while you were in conference? A. Well, we are in conference now.

Q. Part of 1908 you were not in conference, and you were still in competition?

MR. KIRLIN: He is giving the rates as they were.

Q. I say in order to get the rates for 1908 you took the 3652
whole year's traffic in conference while you were there? A. Of course, I am giving the average rate during the year without regard to conference or not conference.

Q. Go ahead. You are speaking for your own line? A. Our own line. That is, the two German Lines as one.

Q. Go ahead? A. 1909, $5.25; 1910, it was $5.18; in 1911, it was $7.56, and in 1912, it was $8.25.

Q. That would seem to be an increase of about 47 per cent.? A. From what year to what year?

Q. From 1907 to 1912? A. Why not—we can just as well figure from any of these places.

3653 Q. It is not a question so much, Mr. Sickel, of why not doing it; I am saying that there has been an increase in tonnage. I mean rate per ton, from 1908 to 1912, according to your figures, of about 48 per cent. Now, do you know what the increase of business has been in that time between New York and the Brazilian ports? A. I cannot answer for all lines. I can answer only for my own line.

Q. Do you know whether or not the increases that have been made from time to time, or the decreases in making up this average have been in any way occasioned by the
3654 rates charged within that period of years by tramp steamers? A. Yes, the tramp is always an influence in our rate, because if his rate is low ours must also necessarily be low, because if we keep it higher than the tramp basis then we will have competition.

Q. Then you purpose is to fix a rate where you will not be met by that competition, is that the idea? A. We endeavor to do so.

Q. And you endeavor then to fix a rate that will be as much as the traffic will bear and at the same time will not
3655 invite the incursions of the tramp? A. We do.

Q. Do you know how many tramp steamers have been on the berth here from 1908 down to 1912 for Brazilian trade? A. None to my knowledge.

Q. Then it was not the fact that the tramps actually were offered here that in any way influenced the rates, but due to your apprehension that they might be here if you did not fix a rate that would practically be no particular inducement to them, is that it? A. We keep our rates at a level where the tramp could not be loaded against us and his rates fluctuate very violently.

3656 Q. Have you in mind the ordinary tramp, or have you in mind the shippers who have the requisite means to charter tramps? A. I have both in mind. That is done in two ways, the employment of tramps.

Q. Well——— A. One is by a shipper who can accumulate enough to load a ship in its entirety, another by the brokers who will go to shippers who cannot accumulate sufficient and gather the goods together on their own account and charter.

Q. Now, take the first of this category; do you mean those who have the means to furnish large shipments and therefore are able to charter vessels; do you have in mind

any particular shippers here? A. Yes, I have particularly 3657
in mind the Standard Oil.

Q. And any others? A. I am not sure, but I think the United States Steel Company ship in volume sufficiently large to do that at times, but whether or not they have done it, I don't know.

Q. Any others? A. I cannot recall any others at the moment.

Q. Then in fixing your rates upon oil and upon the steel products you make it a point to fix a rate that will not invite the steel corporation and the Standard Oil Company 3658
to go in and charter for their own account? A. We endeavor to do that, although sometimes we don't. We let them do it.

Q. But generally speaking you endeavor to charge a rate just as much as they will stand and which at the same time they will not go out and charter vessels on their own account? A. I cannot say that is always true of the Standard Oil, because we have permitted them to ship a great deal outside of us instead of meeting the competition.

Q. When? A. I think within the last two years they 3659
have been loading steamers.

Q. Give us the time and how many times? A. I cannot recollect the number of times.

Q. Was that because at that time you had plenty of other cargo anyhow? A. I think that is always the guiding influence. If we have plenty of cargo and they can ship their oil elsewhere we will let them ship elsewhere.

Q. But if you have not got plenty of cargo then you make it a point to quote a rate so that they would not go out? A. We are apt to meet competition then.

Q. You do not answer my question? A. Repeat the ques 3660
tion.

Q. (Question read.) And charter for their own account? A. We would endeavor to carry that cargo then.

Q. You would answer that question yes then, wouldn't you? A. Yes.

Q. Now, you are very alert to determine in advance then about how much you think that particular traffic will stand, and fix the rate accordingly as not to invite the outside charterings by them? A. We would.

Q. Now, coming down to the second catagory of brokers

3661 here who can collect, how many times has it happened since 1908, where any brokers have been able to accumulate freight of one kind or a miscellaneous character, where they have chartered outside vessels to go to Brazil? A. We keep our rate so low that I don't think there has been one able to do it.

Q. Then you have the same purpose with them as you have with the large individual shippers, to fix your rate—that is to say, fix a rate so that they won't come in? A. I answered that question.

3662 Q. Yes? A. No, I said—what my answer was, that we keep our rates so low that not a single one within the last two years.

Q. I say your purpose then would be the same with reference to the collector of freight as it was with reference to the large shippers, so that he would not be influenced to charter vessels for that trade? A. I have answered the question.

Q. Then I take it from this method of meeting the probability of others engaging or coming in by employing tramps
3663 that during this period of time that you have mentioned the tramps themselves have not fixed a rate in any way? A. Most decidedly they have.

Q. Well, if they have not been here and you have fixed the rate how is it that they have themselves in any way contributed to the fixing of rates? A. Because their rates fluctuate up and down and we follow those fluctuations.

Q. But then the tramp steamers themselves usually are chartered for a full cargo, aren't they, usually? A. I would not say usually.

3664 Q. Well, do the tramp steamers come here and offer themselves on the berth for miscellaneous cargo, package cargo as well as rough cargo? A. You don't understand the manner of doing the business.

Q. Probably not; I am not a shipping man? A. I will explain it if you wish to know.

Q. I think you will have to answer my question the best you can. You have counsel here who can ask you what your particular interests require to be asked? A. Will you please read the question.

Q. The following question repeated: Well, do the tramp steamers come here and offer themselves on the berth for

miscellaneous cargo, package cargo, as well as rough 3665
cargo.

Q. Whether I understand the business or not you can answer the question whether they do or do not? A. Indirectly they do.

Q. Well, now, when and how often? A. Tramps are offering continuously.

Q. For package cargo? A. For anything that they can get.

Q. Now, you are quite sure that they are being offered here continuously? A. To be loaded anywhere, continu- 3666
ously, yes.

Q. Are any of them being offered here to be loaded for the Brazilian trade? A. They would load to Brazil or any place in the world where they can get their charter rate.

Q. Has the conference here fixed any rate or changed their rates based upon any offerings made by tramp here in recent years? A. Why, it is guided entirely by that and the Lloyd Brazileiro competition.

Q. Now, Mr. Sickel, we have a tariff schedule here that has been printed, and with the exception of a few com- 3667
modities, generally speaking, there have not been from 1908 to 1912 and great change in the rates that have been quoted upon these articles? A. I don't know that that is the fact.

Q. I will show you the exhibit and perhaps you can spell it out for yourself. Now, Mr. Sickel, if you will look at Exhibit 213, and Exhibit 3 for identification, you will see that the first is the printed tariff of July, 1904, purporting to be revised on January 1st, 1910; and the Exhibit 3 for identification is the printed tariff of March, 1912, and if you will look at them you will see just as I say to you, 3668
the majority of the items in the printed schedule that appear there have not been changed. Take the one revised in 1910. The evidence here is that this is the draft of 1904 with the amendments with some exceptions that do not appear there? A. Our records of earnings dispute that.

Q. Then they are not right then? A. I don't know anything about that. I have never seen them, but I have given you a record of what our average rate per ton was from 1907 to 1912, and you said it was 47% increase. Now, the rates must have changed.

Q. It might be changed upon a few articles and the

3669 balance remain the same, wouldn't they? A. That is a possibility.

Q. Now, if the tramps affected this, that is to say, what the tramps were offering their tonnage for and these tariffs that obtained here and were ordinary so far as the conference originated, and are determined in the London conference, how can the rate quoted by tramps here affect the rate? A. Well, the fact remains that that is the influence with us, because we do not let any tramps load against us.

3670 Q. Have you been consulted by the London conference in establishing the rates that are set forth in your tariffs? A. No, but they know——

Q. No, answer yes or no? A. I do not recall their asking us what rates they shall make.

Q. You know the fact to be, do you not, that the printed tariff rates which are already in evidence here were the European rates translated into American money, you know that, don't you? A. That is what it is supposed to be.

3671 Q. Now, if the rates are established abroad how would tramp competition here to Brazil fix those rates? A. Because they know what the tramp rate is as well as we do, and the same influence would affect them as would affect us here.

Q. Are you just assuming this to be, or have you any knowledge that the European tariff adopted here is based upon the prices asked by the tramps from New York to Brazil? A. I have no knowledge as to that.

Q. Well, now is it not a fact that the tramp that might actually be on the berth here in looking for cargo quotes
3672 his rate having in mind the probability or possibility of not getting any return freight, or not a full return freight? A. That is not the way tramps engage in their business.

Q. Does the method of tramp business differ at all in the way it is transacted from here to Brazil from the way it is in other parts of the world? A. The tramp business is as distinct and separate from the regular line business

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Q. I am speaking of tramp business in other parts of the world? A. The tramp business is conducted in all parts of the world the same.

Q. For instance, you take a tramp engaged in the sugar 3673
trade to Java, there they go out, do they not, practically light, so that they can get return cargoes? A. They do so if they can get a big enough rate returning from Java; but if the rate is not high enough they may go off in some other direction and then come up to Java.

Q. Don't you know as a matter of fact that they very frequently do go out practically light and return with full cargo and charge the rate from Java to the European ports so as to cover both ways? A. Why, of course they do that. 3674

Q. Now, would not the tramp in making his rate here have the same condition that he would have to go out, generally speaking, if they went out with full cargo, that perhaps he couldn't get a full cargo back? A. The tramp does not do his business that way.

Q. How does the tramp do his business from New York to Brazilian ports? A. He does not do it direct with the shipper; he does it through a broker.

Q. I don't care with whom he does it. The fact remains that he fixes his rate upon the expectation of not 3675
getting a full return cargo, doesn't he? A. What his return cargo is to be, whether it is to be anything, determines the rate that he will name.

Q. From here? A. If it is for a single voyage; but they are not necessarily taken for single voyages.

Q. I am assuming that it may be for a single voyage, and may be a continuation of charter; but assume for a single order? A. Then it is taken under entirely different conditions.

Q. Assuming for a single voyage that would be a consideration that influenced him, wouldn't it? A. A single 3676
voyage from where to where?

Q. The very ports we are talking about, New York to Brazil? A. There are no charters made that I know of at a fixed rate of freight by tramps from here to Brazil.

Q. Well then, how would they affect your price at all if there was no fixed rate? A. Because he charters the ship to the broker under a condition different from the one that you have mentioned to me.

Q. I don't know what condition you are speaking about? A. I know, you won't let me tell you.

Q. Now I will? A. All right. I offered to do it a few

3677 minutes ago and you wouldn't permit me; you said I could refer to my attorney.

Q. Tell us the condition that operates upon the tramp who does business from this port to Brazil? A. He offers the ship to the shipper or the broker, whoever has the business to ship, on the basis of so many pounds per month on dead weight carrying capacity of the ship. Now then, if you take that ship for three months he will make you maybe one rate; if you take it for six months he will make you another rate. He does not care whether you bring that
3678 ship back in ballast or not, and there is also an agreement with him as to where he redelivers the ship. Now, it is a perfectly indifferent to him whether he loads locomotives or oil or any other lawful merchandise so long as he gets his charter hire; but if we were to say to him we will take your ship for six months and we expect to redeliver it at the place or some place else, he will then know the conditions of the market and he will be guided by where the redelivery is because at that time he may know that certain freight from the point of redelivery is going to offer, or it
3679 will not, and dependent upon that question is the cost of the charter.

Q. You have in mind charters—I believe you are testifying now to tramps that charter for a specified time? A. What we call a time charter, yes.

Q. And I suppose that you have in mind instances such as the charters made by the Standard Oil Company? A. not necessarily the Standard Oil Company; anybody.

Q. What about the occasional tramp that does not get a time charter running over a period of two or three months or more? A. They are all employed. If they are
3680 not all employed there is a depression in the business.

Q. But if a tramp has an opportunity to fill his vessel through a broker that you speak of, who can collect miscellaneous freight? A. Yes.

Q. Under those circumstances then it would be a trip charter, wouldn't it? A. Not necessarily.

Q. It often happens, doesn't it, that the tramps do make trip charters instead of time charters? A. Not in the trade between here and South America.

Q. Not at all? A. That is, I mean they do not take it on the basis that you will run from here to the River Plate and then take our chances——

Q. Do you know whether or not the Standard Oil Company frequently makes charters for what they call trip charters? A. Case oil is taken on a different basis from other class of business; they take it to a specific destination for a specific price per case. 3681

Q. And there they take into consideration the possibility of their getting any return freight, don't they? A. And they make their freight accordingly.

Q. You can answer that question yes or no, whether they do take it into consideration? A. They do take it into consideration. 3682

Q. So that in that instance of a charter he has to get and he quotes to the shipper here a rate that would be recompense to him if he did not or was not able to get a return cargo? A. He gets his return cargo to some other country; not necessarily to the United States.

Q. Yes, but doesn't he take into consideration in fixing the rate to the shipper here the possibility that he would not get it to any other country? A. No, he does not, because he knows his trade.

Q. In other words, you say definitely a tramp does not go out of here with case oil to places in South America unless he knows absolutely in advance that he is going to be able to get full cargo to some other place? A. If he was in doubt about getting his full cargo after he was redelivered in the Plate he would make a higher rate from here to the Plate than he would if he was going to get a return cargo. But your question was not originally along the lines of the oil, it was along the lines of loading general cargo, and that is taken under an entirely different form of time charter than the oil. There are various forms of time charters. 3683 3684

Q. How many times has the tariff rates in any way within your personal knowledge been either lowered or raised because of the fact that tramps were or were not expected to be offered upon the berths here for the Brazilian trade? A. What particular commodity?

Q. I don't care what the commodity is; upon the question of what you charge? A. I am not in the conference and I don't know how often that question comes up, so I cannot answer.

Q. What occasioned this raise from 1908 to 1912? A. Because the rates of freight all over the world advanced;

3685 the demand for ships was greater than the supply, and the cost of operation of ships are very much greater.

Q. Do you know what the rate of advance was in 1908? A. Rates to?

Q. To Brazil? A. 1908 over 1907?

Q. Yes; not the rates, but the amount of business that occasioned the demand? A. The volume?

Q. Yes? A. The volume in 1908 fell off from 1907 by our line from here to Brazil.

Q. From 1908 to 1909? A. The volume of business?

3686 Q. Yes? A. Our line from here to Brazil it increased from 52,966 payable tons to 56,077 payable tons.

Q. Go over it again? A. The increase of 1909 over 1908 was 52,966 and 56,077.

Q. And 1910-11? A. The business in 1910 was 93,126 payable tons as against in 1909, 56,077 tons.

Q. Now 1911? A. The volume in 1911 was 85,030 payable tons as against in 1910, 93,126 payable tons.

Q. And 1912? A. For 1912 it was 126,786 payable tons as against 1911 of 85,030 payable tons.

3687 Q. How many boats did you run in 1912? A. 18.

Q. And how many in 1911? A. 13.

Q. And how many in 1910? A. 16.

Q. And how many in 1909? A. 13.

Q. And how many in 1908? A. 19.

Q. Do you know what the volume of business was by the other conferee lines? A. I do not.

Q. Do you know how your number of boats compared with the number run by the other lines for the same years? A. I do not.

3688 Recess taken until two o'clock P. M.

AFTERNOON SESSION.

WILLIAM G. SICKEL, recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Now, Mr. Sickel, referring back again to the question of the rates which you established, is it not a fact that you never lowered the rates beyond a point which is necessary to avoid the tramps or outsiders, that is right, is it? A. Yes.

Q. Now, all of the North Atlantic general line business,

and I mean by that to any of the North Atlantic ports on 3689
either side to the South American ports is all in the Conference, isn't it, regular line business? A. The North Atlantic?

Q. Well, North Atlantic business, the general line of steamers are in conference of some kind.

MR. KIRLIN: How is that material here?

MR. SPOONER: That is not material and not within the issues made in the pleadings in this case.

MR. MONTGOMERY: It may be.

MR. SPOONER: In what respect? 3690

MR. MONTGOMERY: In several ways.

MR. BALDWIN: Do you object to it? (Addressing Mr. Spooner.)

MR. SPOONER: Yes, I object to it.

MR. BALDWIN: Put your objection on and let him answer.

MR. SPOONER: As immaterial and not within the issues.

A. Read the question, please. 3691

Q. (Question read.) A. I am not sure that I understand that question. Do you mean lines operating between here and Europe that have nothing whatever to do with Brazil or any Conference?

Q. No; all of the—for instance, all of the lines that operate from the Continent of Europe or the United Kingdom to the South American ports? A. Yes.

Q. Are in conference, are they? A. I don't know whether they are or not.

Q. Do you know what per cent. of outward shipments from New York to Brazil is carried by the conference 3692
lines? A. I do not.

Q. Is it about 50%? A. I don't know.

Q. I mean now as to the volume? A. I don't know.

Q. The only other regular line from here to Brazil is the Lloyd Brazileiro, isn't it? A. That is correct.

Q. Now, between the Lloyd Brazileiro and the conference lines, is it not true that practically all of the outward shipments to Brazil are carried by the conference and the Lloyd Brazileiro? A. No, because the Standard Oil ship a great deal of oil outside of the conference lines, or outside of the Lloyd Brazileiro.

3693 Q. Outside of the Lloyd Brazileiro and the occasional shipments of the Standard Oil Company where they charter, and a few instances where there have been other chartered boats, is it not true that practically all of the outward shipments are carried between the Lloyd Brazileiro and the conference lines boats?

MR. KIRLIN: You want to include Steel in that, don't you?

MR. BALDWIN: You can assume that the steel business uses charters, but the volume of it as compared
3694 with the whole volume would still make my question adequate. That is practically all.

A. Excluding the oil and possibly some shipments of the United States Steel Company most all of the business from New York is carried by the conference lines and the Lloyd Brazileiro—from New York only.

MR. KIRLIN: And to certain limited ports in Brazil.

Q. What per cent. of the inward traffic from Brazil is
3695 carried by the conference lines? A. I don't know.

Q. Isn't it the great majority? A. I can't tell you.

Q. Do you know whether or not the inward traffic from Brazil is carried, a very much larger per cent., carried by the conference lines than is carried by the Lloyd Brazileiro? A. I believe that to be a fact, but I have nothing to base it on.

Q. Is it not true that the inward traffic is very largely confined to the carrying of coffee? A. It is with our line.

Q. Is it not true with the other conference lines? A. I
3696 judge what is true with us must be true with them.

Q. Is it not a fact that about 90% of the importations from Brazil that are brought in over the conference lines is coffee? A. I have no accurate data on the subject, but I should think it would be easily 90%.

Q. There has not been any incursion into the Brazilian trade by any outside regular line, has there, since 1908? A. I have already told you that, sir.

Q. I don't think you have, and if you have I don't think it will do you any harm to answer it again? A. There has not been, because we have kept our rates so low that they would not compete with us. That is my answer as near as I can remember it.

Q. You then so conduct the business, that is, the Con- 3697
ference lines so conduct the business in establishing rates so that you do not fear the intervention of any other outsider? A. That is a constant fear with us.

Q. Could any outsider get in here and participate in this Brazilian trade? A. Not so long as we keep our rates within reasonable figures.

Q. What is there to prohibit a carrier with sufficient means and sufficient experience to offer boats here in the regular service and get part of the business? A. There is nothing to prevent them that I know of.

3698

Q. In the event that a new line should be formed with sufficient capital and resources to run a regular line of boats what would be your attitude; would you let them in?

MR. SPOONER: That is not a competent question.

MR. KIRLIN: I object to it as speculative.

MR. SPOONER: It is not for him to say whether he would let them in or not; he is an employee; that would have to be settled by the principals.

MR. BALDWIN: He can state whether he knows 3699
what the policy of the conference lines is?

MR. SPOONER: I object to it as incompetent and immaterial.

A. It would depend on how powerful they were.

Q. That is, I suppose you mean by powerful, that means if he had sufficient resources to practically put up a fight for this business? A. And equipment.

Q. If he had the resources he could get the equipment, couldn't he? A. He could.

Q. In the event then that he did have the resources and 3700
equipment he would be admitted because he is powerful enough, and in the event that he did not have he would not be admitted, is that the idea?

MR. KIRLIN: Same objection.

MR. SPOONER: Same objection and immaterial and incompetent.

A. The decision would lie entirely with our principals abroad.

MR. SPOONER: That is his opinion as to what others would do.

3701 Q. You have already testified, have you not, along that line before this same committee you have spoken of before, in the House of Representatives? A. That was my own personal opinion.

Q. And you are now expressing your own personal opinion? A. Well, we would not take an attitude in trying to compete with a strong rival who wishes to make enquiries into this trade without having the opinion of our principals abroad.

Q. Did you not state before that committee that if the
3702 line or man who wished to take a—that is, a man who knows his business and has capital, I think he would be admitted without any fight? A. That is what I still think.

Q. Then in your judgment the question of whether he would be admitted to the conference and participate in this business would depend entirely upon whether he or it was powerful enough to put up a good fight for the business, is that it? A. That is my personal opinion.

Q. Did you further say that it would be a question of whether it would be cheaper to drive him out or let him
3703 in? That question was put to you in that form and your answer was that may be; do you remember that; is that still your judgment about it? A. I may have said that. I don't recollect exactly. I will accept your statement.

Q. That is still your judgment, isn't it? A. It is still my judgment.

Q. This morning, Mr. Sickel, when I interrogated you preliminarily about testifying before that committee, I asked you certain questions, and you said you were not testifying about Brazil? A. Not specifically.

Q. There is no question asked you or nothing said by
3704 you that showed that you were not testifying about Brazil as well as the other conference business, was there? A. That testimony is supposed to be blanket testimony covering the trade in general without regard to its definiton.

Q. But you did have in mind when you were talking including the Brazilian trade or other trade in the conference, weren't you? A. I had every trade that we serve in mind when I gave the testimony.

Q. And that, of course, included the Brazil trade? A. We are in Brazil.

Q. Do you know whether or not, Mr. Sickel, since the conference agreement was entered into in 1908 you have

put down your rates; I am speaking of freight rates, of 3705
course? A. I cannot recall.

Q. And according to your own figures is it not true that rates have been since 1908 upward? A. In 1908 they were less than they were in 1907.

Q. I am speaking of from 1908 up to 1912 inclusive? A. No, the average rate in 1910 was less than it was in 1909.

Q. Was it less than it was in 1908? A. No; in 1910 it was more than it was in 1908.

Q. What I want to establish is that the general trend of the rates has been up, broadly speaking, since 1908? A. 3706
The tendency of the rates from 1908 until about the middle of 1911 was stationary, with fluctuations; from the middle of 1911 up to the end of 1912 they had advanced quite rapidly for the reasons previously given you.

Q. Now, the volume of business in 1908 was acutally less than 1907, wasn't it? A. It was.

Q. And there was a surplus of tonnage available for the traffic? A. Between what years?

Q. I am speaking in 1908? A. Yes. That is indicated through the fact that our ships went to sea with room in 3707
them during 1908.

Q. Did you have as many sailings in 1908 as you had in 1907, or more? A. We had more sailings in 1908 than we had in 1909.

Q. 1907, was my question? A. Well, we had 18 in 1907 and 19 in 1908.

Q. Well, do you know whether or not the other lines had more sailings in 1908 than they did in 1907? A. I do not.

Q. Now, Mr. Sickel, paragraph 7 of Exhibit 1 of the Petition in this suit provides that "In the event of any of 3708
the parties to this agreement starting a service in which they have not already been engaged previously and by which any of the other parties to this agreement are at present engaged, it will be competent for any parties whose trade may be so interfered with to withdraw from this agreement forthwith." Now, do you know of any instances where anyone of the parties to this agreement entered into any line of trade that any of these conferees were engaged in in any other locality? A. I don't recall any.

Q. Do you know whether or not a clause similar to that paragraph 7 of the Exhibit 1 attached to the Petition here-

3709 in that you have just read is in all of the conference agreements in which the Hamburg-American Line was a party?

MR. SPOONER: That is objected to as incompetent and not within the issues.

THE WITNESS: I do not know.

Q. Well, have you seen any of the other agreements where there are conferences with other lines in other trade than the Brazilian trade and New York? A. I have seen some of them.

3710 Q. Do they have that provision? A. I do not recall such a provision. It may possibly be in, but not to my knowledge.

Q. Do you have copies of any of those agreements? A. I am not sure. It is our custom when agreements are made to send them—to apprise us and we generally send them back to London.

Q. I wish you would make inquiry and see whether you have, will you? A. Yes, sir. There was one we exhibited in Washington; that was the Royal Mail agreement..

3711 Q. Did it have that provision in? A. No.

Q. Or any provision of a like nature? A. I cannot recall such. That agreement that I referred to is in Mr. Betts' testimony given just prior to mine in Washington.

Q. Well, the Hamburg Line has been and are engaged in the Japan-China trade, are they not? A. The Hamburg-American Line is.

Q. Now, I show you what purports to be a printed memorandum of agreement regarding the trade between Japan, China, Manila, Malabar Coast to United States via

3712 Suez. Have you ever seen that or a copy of it? A. I have never seen it.

Q. Have you ever seen the agreement or a copy of the agreement in the Asiatic trade in which the Hamburg Line is interested? A. The first time I ever read it was in your Petition.

Q. You knew there was some sort of conference agreement, did you not, in which the Hamburg Line was a party, affecting the Asiatic trade? A. I only learned it through our freight agents who represent us in that trade.

Q. You knew nothing about any provisions or terms? A. I said I had never seen the agreement.

Q. But you might have known without having seen the agreement. 3713

MR. SPOONER: I object to this as incompetent, immaterial and not within the issue.

A. No, I have no knowledge.

MR. BALDWIN: Finished with the direct.

Cross-Examination was adjourned to June 9, 1913, at 10 A. M. with the reservation to Mr. Burlingham to cross-examine later in accordance with right extended to other counsel heretofore. 3714

Hearing adjourned to Monday, June 9th, 1913, at 10.30 A. M.

New York, June 9th, 1913.

By consent hearing adjourned to Tuesday, June 10th, 1913.

New York, June 10th, 1913. 3715

Hearing resumed pursuant to adjournment.

APPEARANCES:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles Burlingham, Esq., and Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*

MESSRS. SPOONER & COTTON, by J. C. Spooner, Esq., for Paul Gottheil, *et al.* 3716

MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin, Esq., and M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

MR. SPOONER: I have read over Mr. Sickel's testimony and find that I will not want to cross-examine him. I will, however, put him on later as a witness for the defense, but we need not wait now for that.

WILLIAM G. SICKEL recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Sickel, have you got the conference agreements I

3717 asked you for last Friday? A. You mean the 1907 or 1908 agreement?

Q. No, I asked you for such agreements as you had in which the Hamburg-American Line was in conference with other lines other than this one mentioned in the suit? A. Wherein it mentioned——

MR. SPOONER: That is too broad.

MR. BALDWIN: I ask if he has got them here. That is all. This is only in line with the request that we made here on Friday, if you remember it; whether
3718 they are competent or not that is entirely a different question. If he has them I would like to have them.

MR. SPOONER: Well, as I understood you wanted to now whether this agreement that—they had other conference agreements which contained this particular provision you refer to.

MR. BALDWIN: Yes.

MR. SPOONER: We have gone all over this; and if we find any we will stipulate that that was the fact,
3719 and we will show you the agreement, but I suppose there are a great many agreements between steamship companies. That don't admit the right of the Government to go outside of the issues and try for contempt——

Q. Mr. Sickel, on Friday I asked you if you had any copies of conference agreements in your possession or under your control or in your office that the Hamburg Line had with any other line affecting the Brazil trade to
3720 the United States or to Europe and relating to rebates, and also if you did have it, any correspondence that accompanied the same, and asked you if you would look it up? A. I have looked it up and we have none.

Q. Now, Mr. Sickel, does the Hamburg Line carry steerage passengers to Brazil or from Brazil here? A. They do not.

Q. Now, they formerly did, did they not? A. At one period during the existence of our line from here to Brazil we carried steerage passengers, but just what year we abandoned that I cannot recollect without looking over our records.

MR. SPOONER: Well, about what year, have you any 3721
idea how long ago it was?

THE WITNESS: I think we abandoned it about 1909, about the time that I took hold of that branch of the business or thereabouts.

Q. Now, do you know why your line abandoned the carrying of steerage passengers? A. We changed the class of steamers. Our steamers were not suitable to the carriage of the business.

Q. Well, was it in 1909 that you changed the class of 3722
steamers or 1910? A. From 1907 to 1909 inclusive we had in the trade steamers that were suitable to carry passengers; but in 1910 we changed that class of steamers and ran strictly freight boats. In fact, that almost answers the question that you put to me as to when this change came.

Q. Now, what became of the boats that you took off that were suitable for carrying passengers? A. They have gone into other trades, I don't know where.

Q. But still under the control of or owned by the Ham- 3723
burg Lines? A. Those ships were the *Siegmund*, *Sieglinde*, and *Gunther*, the *Gutrune*, the *Christiania* and *Corrientes*. Whether those ships are in the fleets of the two companies now or not I am not sure.

Q. After you had abandoned the steerage business because you changed the character of your ships, what was done by the conference with reference to the carrying of the steerage business or conducting the steerage business that you theretofore had carried on? A. So far as I know the conference has never had anything to do with this pas- 3724
senger traffic.

Q. Are you quite sure about that? A. I won't make that as an absolute statement, but the only agreement is covered in the original agreement. I may be mistaken in that, but I have never heard passenger business discussed in conference matters.

Q. Do you know whether or not it was arranged for by the principals between themselves? A. With the other lines?

Q. Yes? A. I have no knowledge of that fact. In fact, my belief is that it was not arranged.

Q. Wasn't it arranged that the Lamport & Holt Line

7325 should carry all the steerage business? A. Not by agreement with them.

Q. Are you sure about that? A. I have no knowledge to that fact that it was.

Q. Now, were you consulted at all about establishing a line [illegible]n Savannah? A. You mean our principals abroad consulted us?

Q. You? A. I personally?

Q. Yes? A. I don't remember Savannah being under discussion.

7326 Q. You knew a line was established? A. By us?

Q. Yes? A. No, I did not know that.

Q. Well, I was evidently under the wrong impression about this Savannah line, and I will ask you a different question. Were you ever consulted about the Brazil steamers of your line or any of the lines making a call at Savannah for Savannah business? A. I have an indistinct recollection that that matter was under discussion at one time, but I can't recollect the details.

Q. Well, do you recollect whether or not there was some
3727 proposal that your line and the other lines should make calls at Savannah and that that should be arranged for under a separate remuneration outside of the pooling agreement which then was in force, and that the Lamport & Holt Line objected to it; do you remember that? A. I do not.

Q. Although you have some recollection of it being discussed in some way? A. I said I have a faint recollection of something of that kind being under discussion.

Q. And do you remember whether or not there were any
3728 boats of those two lines that went there? A. Of our conferees?

Q. Yes? A. No, I don't recollect that.

Q. Or your own? A. I am quite sure that none of our boats went to Savannah.

Q. Now, Mr. Sickel, has the Hamburg Line paid any rebates to coffee shippers here in New York? A. Not that I know of.

Q. Have you paid any rebates to shippers other than coffee shippers here in New York? A. None that I know of.

Q. That is, you are now speaking, of course, since 1909,

which you have knowledge of distinctly? A. That is the 3729
only period I can speak of.

Q. And no rebates have been paid to coffee shippers or any other shippers here in New York? A. None that I know of.

Q. Well, has the home office here made any remittances to shippers, paid any rebates on their coffee or other commodities from Brazil ports? A. Not to my knowledge.

MR. BALDWIN: That is all.
MR. SPOONER: That is all.
Witness excused. 3730

HENRY M. HUMPHREY, called on behalf of the Petitioner, testified as follows (being first sworn):

DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Humphrey, where do you reside? A. New York City.

Q. You are connected with the firm of Arbuckle 3731
Brothers? A. I am.

Q. In what capacity? A. I am bonded as financial manager. I have to do with the general orders for coffee as well.

Q. And how long have you had such connection with Arbuckle Brothers? A. Nearly seven years; from August 1st, 1906.

Q. And with them in some other capacity before that? A. No capacity.

Q. Now, Mr. Humphrey, do you recall there being a 3732
meeting in your office at Arbuckle Brothers' place of business in which Mr. Daniels and Mr. Arthur Cook and Mr. Jamison and Mr. Gray were present, in which your shipments of coffee were being discussed? Mr. Cook was there I am not sure whether his name is Arthur; his father's name is Arthur, but I am not sure whether that is his name, but Mr. Cook was present, young Mr. Cook.

Q. You mean the son of—— A. He was introduced as the son of Mr. Arthur Cook who was the head of the line.

Q. And Mr. Louis R. Gray? A. Yes.

Q. And who was Mr. Gray? A. Mr. Gray is from our Brazil office, with his head office at Rio.

3733 Q. You mean the head of the Brazilian office of Arbuckle Brothers? A. The style—it is all the same partners and same firm, but it is called Arbuckle & Company, at Rio de Janiero and Santos and Victoria.

Q. It is the same Arbuckle Company? A. The same partners and identical in every respect with Arbuckle Brothers in New York.

Q. Do you remember when that conversation took place? A. It was in the fall of 1911, as I remember it.

Q. And what occasioned that conference at your office,
3734 do you remember? A. A letter addressed to Busk & Jevons, and their reply.

Q. You say a letter? A. Mr. Jamison has the letter in his possession now.

Q. I show you Exhibit 185 which purports to be a copy of a letter. Will you look at it and state whether or not that is the one? A. That is a copy of the letter, a copy made under my instructions. Mr. Jamison has the original and also the copy of the other letter referred to there.

Q. This letter, Exhibit 185, is a copy of a letter which
3735 you had sent to Busk & Daniels? A. That is a copy of Busk & Daniels' letter.

Q. Well, this is a copy, I say? A. And the letter that is referred to there Mr. Jamison has a copy of with him now.

Q. I show you Exhibit 184, Mr. Jamison not being here, and ask you to look at it and state whether that is the copy of a letter which you sent to Busk & Daniels which elicited this reply? A. I wish to be clear on that one point. There were two different things in which Mr. Daniels was present, and your questions have reference to the last, which oc-
3736 cured in 1911. This letter was the beginning of things in 1909.

Q. Well, then, I would start with the conference that took place, the first conference, and when do you say that took place? A. That is following this letter. Mr. Cook was not present at this conference.

Q. Where did that conference take place? A. At the office of Arbuckle Brothers.

Q. Just read that letter and see if you can identify it. Is this a copy of a letter? A. This is a copy of the letter which Arbuckle Brothers——

Q. Was this letter dictated by you? A. Yes, by me.

Q. Mr. Daniels was present at that conference, wasn't 3737
he? A. Mr. Daniels was present. My recollection is that at that conference nobody was present but Mr. Daniels, Mr. Jamison and myself.

Q. In this letter, Exhibit 184, among other things, it states that in the end we are informed by the Prince Line people, who form part of the syndicate, that "The syndicate line will only take our coffee provided we guarantee to leave the Lloyd Brazileiro Line entirely," and will you just state in your own way what that conversation was; what you or Mr. Jamison said to Mr. Daniels and what 3738
Mr. Daniels said in return?

MR. BURLINGHAM: Mr. Kirlin not being here has asked me to reserve his right to object to any of these questions.

MR. BALDWIN: All right.

THE WITNESS: That conversation, which was the first, was very general, along the line that Mr. Daniels thought we would be about ready to come back into the fold.

MR. SPOONER: Who was Mr. Daniels represent- 3739
ing?

THE WITNESS: Mr. Daniels represented the Conference Lines, and appeared as representing Lamport & Holt about coming back into the fold, meaning——

Q. Go right ahead? A. Referring to our joining with the other shippers under the rebate system of the conference lines.

Q. That is to say by which you would confine all of your 3740
shipments to the conference lines? A. Yes, of course, that was part of the agreement.

Q. And also with reference to your ceasing to ship over the Lloyd Brazileiro? A. No, not at that time. That was not in question at that time. I mean so far as they were concerned at this time in the conference. What you have there is a statement which was made on that subject, was made to our Brazil office as stated there. We copied in that letter an extract from a letter from Brazil to Mr. Jamison and asked Mr. Daniels whether that was so. He asked him in that letter.

MR. BURLINGHAM: I object to that as leading. He

3741 is your witness really, and I object to your leading him.

Q. What if anything was said by Mr. Jamison or by you to Mr. Daniels with reference to the cable which is set forth in this letter, Exhibit 184? A. Why, this letter was the——

MR. BURLINGHAM: I object on the ground that it is incompetent, irrelevant and immaterial.

THE WITNESS: Why, Mr. Daniels had—the con-
3742 ference was for the purpose of answering that letter. That is, we wished an answer, and Mr. Daniels came there, brought there by that letter, and it was a general talk.

Q. I know, but what was said about it? A. That was referred to.

Q. You mean this letter? A. That letter, yes; that was the question.

Q. Of course, you know the record has got to show what
3743 the question was. That is, was it or was it not the question of whether or not you would confine your shipments to the conference line and cease to ship over the Brazileiro? You are not required to give the exact words; give the substance? A. No, I am not sure. There are two things. The first thing was the preliminary, and he——

Q. That is the one I want first? A. It was a general fishing excursion to find where he stood, and it was a talk growing out of that letter. We wanted to know is that your position or not.

Q. You mean the position as reported in this cable? A.
3744 In that cable. It says the Prince Line said if the conference would be—and Mr. Daniels wanted to see if they would not come back into the fold, and it was talked over in a general way. That was preliminary.

Q. Was anything said whatever about whether you wanted to know what Daniels' position was about the contents of that cable? A. Our object in writing—the whole position went without saying. There was no misunderstanding of either one of us, but in writing that letter we wanted to get Mr. Daniels on record whether that was true or not. I can't give you any details of that meeting particularly enough to swear to definitely because it was,

as I say, preliminary conversation which led up to the 3745
eventual conversation, the meeting to which you referred when Mr. Gray was present, when the whole thing, after it had been thrashed out by correspondence back and forth in which Mr. Cook was present, was taken up for discussion.

Q. You have been shipping up to that time over the Lloyd Brazileiro? A. No, it was not to amount to anything. I don't think we had at all. I think it was after that date. I don't think we shipped by the Lloyd Brazileiro up to that time at all, but we may have paid for one 3746
or two of the vessels.

Q. How were you shipping? A. Chartering steamers ourselves.

Q. Was the substance of this conversation in any way with reference to your giving up chartering and confining all of your shipments over the conference lines? A. Yes, the conversation. Mr. Daniels wanted us to come into the arrangement the same as others had, and he thought by this time we would be tired of outside vessels and various things of that sort.

Q. And to cease chartering and keep all your shipments 3747
for this line? A. Yes, and give them all our shipments. That is a condition of coming back at any time.

Q. Did anything come of that conversation at that time? A. No.

Q. It was carried forward. I mean there was more or less said and nothing doing, and finally it ran along until that later conversation when Mr. Daniels came down with Mr. Cook.

Q. Well, then, after this conversation, the preliminary conversation, and down to the fall of 1911, you continued 3748
to send all your shipments by chartered boats or by Lloyd Brazileiro? A. Yes.

Q. And you did not patronize the conference lines at all? A. We did not. We kept tendering our shipments to them.

Q. And would they take them? A. They never took one.

Q. Did they give a reason why? A. Only as appears in that letter there. I think one or two letters indicate it.

Q. You refer to this letter, Exhibit 186, by Mr. Arthur Cook to Mr. Arbuckle; is that the one? A. That is the one, yes.

3749 Q. I show you this Exhibit 186 for identification again, and ask you from where did you produce this? A That letter was handed to Mr. John Arbuckle after his return from London. The date of this letter is the 28th of November, 1911, and after his return from London he on January 26th, 1912, in clearing up his desk he handed me this letter in his private office. My remembrance is that Mr. Jamison was present, but I am not sure on that point. It was handed to me by Mr. Arbuckle. My memorandum goes across the face and is the date when the letter was
3750 handed to me.

Q. Now, Mr. Arbuckle is dead, is he not? A. Yes.

Q. How long ago did he die? A. Mr. Arbuckle died in March.

Q. This year? A. 1912, that being January, he died in March.

Q. Now, coming back to this second conversation that you say took place in the fall? A. Yes.

Q. Did that conversation take place prior to the time that you saw this Exhibit 186 for the first time or not?
3751 A. Prior.

Q. And that is the time when Mr. Arthur Cook's interview and the other parties that you named were present? A. Yes.

Q. Will you state, Mr. Humphrey, just what conversation took place there? A. You mean at this second conference?

Q. Yes. How Mr. Daniels came there with Mr. Cook, and what was said? A. I wrote out a record of that conversation, which I have.

Q. Well, you will have to testify yourself from your
3752 recollection and you can refresh your recollection from that, but you first have to exercise your endeavors to remember what was said? A. Well, you wish——

Q. Then if you can't do it you can state from any memorandum you have to refresh your recollection. That is the rule? A. Mr. Daniels had some conversation with Mr. Jamison over the telephone in regard to taking up that letter again, the matter of freight relations.

MR. BURLINGHAM: He certainly cannot testify to what Mr. Daniels said over the telephone.

MR. BALDWIN: We will have the man here if you wish.

THE WITNESS: Mr. Daniels and Mr. Cook ap- 3753
peared, is my first knowledge, and we took the matter right upon the basis of whether there was any getting together on it.

Q. Getting together on what? A. On the question of whether there was any basis on which we could get together. It went without saying they would not take our freight. I had there a pile of the tenders which we had made.

Q. Yes? A. That is a statement of the clerk who made 3754
the tender of freight and the answer of Busk & Jevons and the Prince Line, and all that pile was there.

MR. BURLINGHAM: I move to strike that out as not having anything to do with the conversation. It is not responsive to the question. The question is what conversation they had, and for the gentleman to say what papers were there, he might just as well say what chairs were there and what cats were in the room.

3755

Q. The rule requires me more or less to hold you down to a specific happening of events. You may state in your own way what was said on both sides and what happened at that conference. Now, almost anything you say that happened there will be responsive.

MR. BURLINGHAM: We object on the ground that it is immaterial, irrelevant and incompetent.

THE WITNESS: The agreement between the Conference and shippers was referred to by Mr. Daniels and he wished to know whether we would 3756
come back to them on that basis and we said that we were willing to come back if he would make us a rate for cargoes of 75,000 bags and upwards, a lower rate, a rate satisfactory to us; otherwise we to be on the same basis as the conference agreement in signing the conference agreement.

Q. You mean otherwise, if you did—— A. All the particulars. We would come back into the conference, and the only thing we wanted different from the conference was that we should have a rate for a cargo.

3757 Q. A full cargo? A. Yes, 75,000 bags and upwards, and that was talked back and forth.

Q. Yes? A. Mr. Daniels wanted to know what rate would be satisfactory, and Mr. Jamison said I will make you an offer, and he made him an offer of 25c. Mr. Daniels wanted to know if that was the best, and he said "that is all I have got to say, and he said I am a great deal higher than Mr. Humphrey expected me to be."

Q. That is 25c. a bag? A. Yes.

Q. From what port? A. Any of the three ports—San-
3758 tos, Rio and Victoria.

Q. That is a rate based on a full cargo of 75,000 bags and upwards? A. Yes, a full cargo of 75,000 bags or more. Mr. Daniels said "that would be treating you different from other people." I said "You can treat other people the same way; give other people the same privilege." "Why," Mr. Daniels said, "others could not do it." I said "Oh, yes, Hard & Rand could, Wille & Company could, Gepp & Company of Santos could"; and then Mr. Daniels wanted to know what proportion of our busi-
3759 ness—all this was asked by him for information—as to what proportion of our business would be likely to be in smaller lots on the various steamers under the regular rebate basis, and what proportion would be on the full cargo, and we discussed that point.

Q. Well, was anything said about your being charged the regular conference rate for less than 75,000 bags? A. We agreed to go into the conference rate, the complete conference rate, if we had this additional feature of the chartering for full vessels.

Q. In other words, you agreed to go back to the con-
3760 ference? A. Yes, and sign the regular agreements.

Q. And sign the regular agreements? A. Yes.

Q. And pay the conference rate, but you wanted the additional privilege that in the event you had shipments of 75,000 bags or more, then you wanted this special price? A. Yes. Mr. Daniels discussed from his standpoint. He said "you would not expect such and such steamers." We said "no." He said "What notice would you give us of your wanting a steamer;" various points, all pertaining to the detail of how the cargo business would be handled, all in the light of information. We knew that whatever rate was made—in fact Mr. Daniels so stated, if I remem-

ber it rightly—would be submitted to his line. He was not 3761
there to decide it on the spot. He wanted all the information he could get.

Q. Well, did he say anything about what he would do with reference to your proposition? A. In the course of the conversation I said that this whole question—"you won't take our coffees at all under the present basis. That is the contention we have with you," at the beginning, early in the conversation, that "you won't take our coffees at all at any price on going ships that you advertise as open to everybody," and that was interwoven all through 3762
the conversation.

Q. Did he make a rejoinder to that? A. No, he did not dispute it. I made it as a statement of fact and nothing was said in reply. And when he said he would, at the end of the conversation, that he would communicate with the other side and so forth and so on, and I pointed to that pile there and said, "In the meantime we are piling up these things," at which he laughed.

Q. Will you just look at this pile of what purports to be copies of letters and probably some cablegrams marked Exhibit 196 for identification. Is that what you pointed 3763
to?

MR. BURLINGHAM: I object to that.

THE WITNESS: Yes. They were all present except those that are of a later date. I think the date can be——

Q. Can you identify the one there that you say that you pointed to?

MR. BURLINGHAM: I object on the ground that it 3764
is immaterial what he pointed to.

THE WITNESS: I identified all to those dated the first of August, 1911.

Q. Which are those that you have in your hand? A. No, those others (handing papers).

Q. What are these, generally speaking? Correspondence that you had with somebody? A. It is a tender to the agent of the Lamport & Holt Line at Rio or at Santos of a certain amount of coffee for shipment at the current rates, at the going rates, without reference to rebate or anything else.

3765 MR. BURLINGHAM: We object to the witness stating what the documents are or what they contain or characterizing them as tenders.

MR. BALDWIN: I offer them in evidence.

MR. BURLINGHAM: We object, on the ground, first that they are not properly proved, that they are immaterial, irrelevant and incompetent, and that they are not properly proved and that the documents or letters that passed between Arbuckle Brothers and certain persons in Rio which were
3766 absolutely outside the knowledge of this witness cannot be proved by a mere statement that he pointed to the documents on the table. They appear further to be letters passing between Arbuckle Brothers or Arbuckle & Company and their friends or persons unknown to us and having nothing whatever to do with these defendants, entirely unrelated to us.

Q. Where were these documents that you have just identified? A. Lying on the table.

3767 Q. And what did you say to Mr. Daniels in reference to them?

MR. BURLINGHAM: I object to that.

Q. And what did he say to you? A. My words were "In the meantime we are piling up these things."

MR. SPOONER: It looks to me as though some of them are objectionable and some others may not be.

MR. BALDWIN: I will offer so much of that pile
3768 of papers to which he pointed that has to do with or purports to show the terms of the tender of coffee to the conference lines or any of them in any one of these Brazilian ports.

MR. SPOONER: I think we can agree on that later.

Q. They were right there where he could examine them, I suppose?

MR. BURLINGHAM: Objected to.

A. Yes.

Q. And what response did he make when you said these were piling up? A. He laughed.

Q. In the course of the conversation you were discussing or something had been said about the question of offers of coffee and they would not take it; is that right? 3769

MR. BURLINGHAM: Objected to as leading.

THE WITNESS: I have already said that I——

Q. And you spoke of these papers in connection with the statement made by you?

MR. BURLINGHAM: Same objection.

A. Not at the same time. 3770

Q. Just before he left?

MR. BURLINGHAM: Same objection.

A. Before he left.

Q. Were those tenders of coffee accepted by the conference lines or any of your shipments of coffee that you referred to?

MR. BURLINGHAM: Objected to.

THE WITNESS: What was done appears in the letters over the signature of our employees, the signature of whom I am familiar with. 3771

MR. BURLINGHAM: That is your only source of knowledge, isn't it?

THE WITNESS: That is my only source of knowledge.

MR. BURLINGHAM: I move to strike it out as hearsay.

Q. Did you get any coffee over any of the conference lines during that period? A. No. That I know positively. 3772

Q. This rate of 25c. that you offered per bag for shipments of 75,000 bags or more, in other words, full cargo lots, how did that rate compare with the charter rate or the rate to Rio de Janeiro? A. At that time we made a charter of 22 and 6, if I remember rightly. That was about the average rate we had paid for a number of years.

Q. How did it compare with the Lloyd rate? A. I don't remember the Lloyd rate at that time.

Q. But it was actually at that time a little in excess of the charter rate? A. Yes, on the average.

3773 MR. BALDWIN: Now, I offer this Exhibit 186 for identification in evidence.

Received in evidence, marked Petitioner's Exhibit 186.

Q. Now, was there anything ever said by Mr. Daniels after you pointed to this? A. No, that was practically the end of the conversation.

Q. Was anything said during the conversation at any time what he would do, whether he would refer it to his
3774 principals or otherwise? A. That was the windup of the conversation, that he would refer it to them.

Q. Was that offer ever accepted? A. No.

Q. After this letter, Exhibit 186, letter of Mr. Arthur Cook to Mr. Arbuckle, was received at the conference lines did the conference lines accept your shipments? A. No.

Q. And at no time they have accepted them; is that it? A. At no time have they accepted our shipments.

Q. Do you know whether since this conversation with
3775 Arbuckles and this letter, tenders have been made of coffee? A. I know that the last tender here is January 3rd, 1912.

Q. You are referring to some communication you have from where? A. From Brazil. Papers. Tenders have been made since that time, but I can't give the exact date. We constantly made tenders.

Q. And do you know whether or not they were made at the current rates?

MR. BURLINGHAM: Objected to.

3776 A. Always made without any reference to rates, and we wanted so much free room.

MR. BALDWIN: I offer for identification this lot of papers here purporting to be communications with reference to the tenders of freight to conference lines in Brazil.

Marked Petitioner's Exhibit 196.

Q. Now, Mr. Humphrey, do you know the reason why the conference lines refused to receive your shipments?

MR. BURLINGHAM: That is objected to unless it is

of his own knowledge and not derived from source 3777
of letters and so on.

THE WITNESS: They refused to take our shipments because we chartered vessels, and that was one reason, and the other was the handling and showing of the letter to Lloyd Brazileiro. My statement was we chartered their vessels.

Q. Is that the reason they declined to take your shipments that you persisted in chartering vessels for your own account? 3778

MR. BURLINGHAM: Objected to.

THE WITNESS: I know positively what the whole reason is and I will swear to that.

Q. What is it? A. The reason was that we would not consign all our shipments to the conference lines absolutely.

CROSS EXAMINATION by Mr. Burlingham:

Q. As I understand it, you have knowledge of no coffee 3779
being tendered in Brazilian ports to the Lamport & Holt boats or any of the conference boats except what you have derived from letters from people in Brazil, is that so? A. In letters or cables in response to our instructions, which instructions I give.

Q. Have you been in Brazil during this period, 1908 to 1913? A. I have not been there in that period, but I have been in Brazil.

Q. I understand that you directed by cable tenders to be made? A. I did, sir.

Q. To what ships? A. To be made to different ships 3780
as appear in there; their ships which appear in there, and others.

Q. During what period? A. I should say from early in 1909 up to within a very—within a couple of months, sometimes by letter and sometimes by cable.

Q. And those instructions were sent by you to your agents in Brazil? A. To the firm in Brazil addressed to the firm in Brazil and signed by the firm name in New York, signed by me.

Q. You import a great deal of coffee, do you? A. We do.

3781 Q. How much per year? A. Something over a million bags.

Q. And in 1907 and 1908 how did you bring it in, in chartered boats? A. Chartered boats.

Q. And as I understand it, in 1909 you had not brought it any of the Lloyd Brazileiro? A. My remembrance is that it would be later than that.

Q. How long have you been operating the line? A. The Lloyd Brazileiro have been operating for a long time, but more or less irregularly. It is a large line, a coast
3782 line, and the steamers to New York are more or less infrequent, and in some cases it has been a question of chartering from them a chartered boat which they had chartered. We have some relations. It has been more since 1909.

Q. They have a large fleet now, have they? A. Yes.

Q. And they make regular sailings? A. Yes, quite regular.

Q. And did they in 1909? A. Yes.

Q. And you send coffee by them? A. No, we charter outside boats. We prefer to charter outside boats.

Q. You prefer chartered boats to the Lloyd Brazileiro
3783 boats? A. Yes, the boats they could furnish at that time.

Q. You mean the charter rate was so low it was advantageous? A. It was advantageous.

Q. And what you wanted in your relations with the Brazil Line was that you should have the privilege of chartering when the rates were favorable for chartering, is that right? A. Yes.

Q. When it was to your advantage you would charter and when it was to your disadvantage to charter, you
3784 would send by these boats; is that the idea? A. We intended to do our entire business by charter. We occasionally wished to ship for ourselves and for customers, we do some business——

MR. SPOONER: You mean ship by the conference lines?

THE WITNESS: Yes.

Q. When did you first take up the matter of shipping by the conference lines? A. My remembrance is 1909.

Q. You had shipped in years past a great deal by the Lamport & Holt Line, haven't you? A. Sometimes, yes.

Q. Did you give them your entire shipments? A. I 3785
have no knowledge of that. That was before my time.

Q. You joined the Arbuckle firm in—— A. 1906.

Q. What had your business been before that? A. I have been a partner in the New York and Brazil partnership in J. W. Doane & Company, large coffee importers.

Q. Now, was Mr. Arbuckle in full control in 1909? A. Yes.

Q. Were you a member of the firm then? A. I was not.

Q. Are you now? A. No.

Q. Was Mr. Jamison a member then? A. He was. 3786

Q. And he is now? A. He is now.

Q. And your exact relation with the firm was what? A. I am bonded as financial manager, but my department since, I think, November, 1908, the ordering of coffee from Brazil and the correspondence with Brazil, the Brazilian business is handled by my department.

Q. You have been in Brazil? A. I have.

Q. How many years ago? A. I was in Brazil last—I was there about seven months in 1896, about six months in 1897 and I was there—have been there previously, in 1884. 3787

Q. Now, you never had any complaint of the freight rates of the conference lines apparently, did you?

MR. BALDWIN: I object to that.

THE WITNESS: How could there be a complaint?

Q. I mean they were reasonable rates, weren't they?

MR. BALDWIN: We object to that.

THE WITNESS: They were not, in our opinion.

3788

Q. Well, Mr. Baldwin asked you whether you specified the rate of freight when you made these tenders, and you said no, did you? A. I said what?

Q. That you did not specify the rate of freight? A. Did not specify any freight. We simply had customers who wanted coffee shipped at a certain time and we wanted it ourselves at a certain time, and we did not have a vessel that would go within that time, and we were doing at that time a considerable cost and freight business, that is to say we had customers who have the say as to when the coffee should be shipped and when it should ar-

3789 rive here, and for such customers in order to arrive on time we made these tenders and for certain coffees we had coming along. We always had the coffee and were always ready to put it right on board.

Q. But the form in which the tenders were made or that you instructed your representatives in Brazil to make tenders without specifying the rate seemed to meet approval, you didn't think the freight a matter of importance?

Mr. Baldwin: I object to the argument of coun-
3790 sel.

The Witness: If you wish me to answer I will say what it means. The point was we wanted the coffee in a hurry, we wanted it before our vessels were destined to leave, and we distinctly wished, wished to ship without any bringing in of any rebate question. If they refused it they refused it at the regular rate at which they had the vessels on the berth, so that they could have no excuse for not receiving it because we wanted to put it on board.

3791

Q. Do you want to put it on board to put them in a hole? A. We wanted to put it on board and they had no excuse for not receiving it. The vessel was on the berth and we tendered the coffee without saying anything about rates and simply asking for an order to take that much on board.

Q. This letter 186, dated the 28th of November, 1911, I understand you did not see until January 26th 1912? A. No.

3792 Q. You knew nothing about it until then? A. I knew that Mr. Arbuckle had seen Mr. Cook, but that had nothing to do with that letter, when Mr. Arbuckle handed it to me on that date.

Q. And this was written apparently just about the time that you were having this conference in New York? A. That was after the second conference. Mr. Arbuckle had been in New York at the time of the second conference and had been over to London in the meantime and had returned and that letter was written.

Q. Was there any answer to this letter to Mr. Arbuckle? A. I think not. Nothing was said. Mr. Arbuckle simply handed it to me.

Q. I observe that in this letter Mr. Cook says that it 3793
was not possible for Lamport & Holt to give you any preferential terms except at the risk of disturbing our harmonious relations with the rest of the trade, which was a proceeding they could not contemplate. You read that in that letter? A. Yes.

Q. What preferential terms did you want? A. The privilege of chartering vessels and different rates for full cargo.

Q. Then there are two preferences you wanted, one that you should—— 3794

MR. MONTGOMERY: Preferences over what?

Q. There were two preferential terms as you wished; which as I understand it was that you should be permitted to charter when you wished, and secondly that you should have a lower rate for 75,000 bag cargoes; is that right? A. No. We gave up the privilege of chartering if they gave us the 25c. rate on full cargoes, because it introduced into their other conferences rate the privilege of entire shipments, the privilege of any shipper to charter a ves- 3795
sel. They would get a vessel at 25c. for 75,000 bags and upwards. Any shipper had that privilege that wanted to do that, and we were ready that any other shipper should do that. That was the whole point.

Q. You suggested that to Mr. Daniels or to Mr. Jamison? A. Mr. Jamison made the proposition.

Q. It was because Mr. Daniels said that that would be a discrimination in favor of Arbuckle Brothers, wasn't it? A. Well, Mr. Daniels wanted to know on what basis—we understood that Mr. Daniels at a higher rate than 25c. 3796
would make the arrangement.

Q. You did not say anything about that in the dealings? A. He did not say so at that time. He asked me——

Q. So that he made the suggestion that you submit it? A. The whole intent of Mr. Daniels was to get us to name a higher rate and he would be satisfied.

Q. The purpose of the conversation, as I understand, was to get an understanding as to what terms business could be done for you with the conference lines, is that right? A. Yes.

Q. And when that was ascertained, when Mr. Daniels

3797 had obtained the information that this little conversation so scantily furnished, he would submit it to his people at home, is that it? A. Yes.

Q. I did not understand in the account you gave to Mr. Baldwin that you were willing to give your exclusive support to the conference lines? A. We were ready to sign the agreement provided they would insert in that agreement a 25c. rate for shipments of 75,000 bags and upwards, an entire steamer.

Q. In that case you would have entered into relations
3798 with them on the rebate basis exactly as other firms? A. Yes, sir, that was the final point.

MR. BALDWIN: The other shippers to have the same privilege?

THE WITNESS: Yes, sir.

Q. This suggestion of a lower rate for shipments of 75,000 bags would apply, of course, only to large shippers like yourselves? A. Yes.

Q. And you say there were only two other shippers?
3799 A. I mentioned two in the United States and two in Santos.

Q. Well, the two in the United States that I understood you to mention were Hard & Rand and Crossman & Sielcken? A. Yes.

Q. And you think it is possible they might have qualified, so to speak, under such a provision? A. They made shipments which would have enabled them to take advantage of that rate.

Q. What other firms? A. The Theodore Wille Com-
3800 pany of Santos, Prado Chaves & Co., Santos, Norman, Gepp & Co. of Santos.

Q. Well, this would be a distinct preferential advantage to large shippers, then, wouldn't it? A. The same preferential advantages which they have granted all through the conference lines. They get 10% rebates on shipments of over 200,000 and 5% on shipments to 100,000; it is all preferential according to quantity.

Q. What do you base that statement on? A. The document itself, which I will produce if you wish it.

Q. Why was it that you were so anxious to come into the fold, so to speak? A. We were not anxious.

Q. You were not anxious? A. We asked them whether

they would or would not receive our freight. We in- 3801
tended to bring suit. That is what started all this thing.

Q. What was the purpose of this conference? A. The purpose was whether a going ship put upon the berth could refuse shippers when they had plenty of room.

Q. Was that the purpose, to lay a foundation for a law suit against them? A. It was.

Q. Was that what the conferences were held for? A. No.

Q. Was that what the tenders were made for? A. For that purpose?

3802

Q. Yes? A. The purpose was for the purpose of establishing the fact that they would not take it in, and they were all bona fide tenders and it would be immediately delivered to the ship, and it was in reference to the orders we had at the time.

Q. It would have been convenient for you on certain occasions to have certain consignments of coffee, shipped by these Conference boats from Brazil to New York in small quantities? A. It would have been.

Q. I suppose these tenders were in comparatively small quantities? A. It varied from 500 to 5000. 3803

Q. You personally had at times given instructions to your representatives in Brazil by cable or by letter to make certain tenders of coffee? A. To ship certain coffees or to make certain tenders, it was in some cases, specifying the coffee, and in other cases to ship part of our stock that we carried there to ship it to New York.

Q. And while as you say you have the coffee and the tender was a bona fide one, one of the motives which led you to issue these instructions was to lay the foundation for a law suit against the conference lines, is that it? 3804
A. To find out whether they would take shipments at all, and in writing that letter before beginning a law suit we thought we wanted to get the direct answer from them, and the result was, as I indicated, Mr. Daniels came down and this conversation took place.

Q. (Question read.) A. To have evidence of the fact as to whether they would or would not take our shipments under any condition.

Q. Did you bring such a law suit? A. We did not.

Q. Why not? A. The whole matter came up and there were several decisions and so forth, that it was pending.

3805 Q. You mean came up how? A. I mean in the general community. There were several steamship suits settled at that time and they were decided and reversed, and then this whole matter came up.

Q. What whole matter? A. The whole matter of the steamship trust so-called.

Q. You mean the enquiry before the Grand Jury? A. No, the enquiry in Washington.

MR. BALDWIN: Before the Committee of the House.

3806 THE WITNESS: Yes. It drifted along.

Q. You mean the Steiner suit? A. That was one at the time. I mean we kept this thing all along in the shape of evidence, did not know where it would lead to.

Q. Evidence of what? A. Evidence that we would have to test sooner or later the question of whether a going ship, a regular liner, when they had room could refuse to take it at their current advertised rates. We were satisfied to go on with that business, doing the chartering,
3807 if we could also ship as anybody could, ship an occasional lot. We were also open, as I have indicated, to anything that we deemed fair to us on the part of the steamship lines.

Q. You still continued to charter, did you? A. Yes, and ship by the Lloyd Brazileiro Company.

Q. You make your shipments by the Lloyd Brazileiro? A. Yes, quite largely since that time.

Q. Do you get rebates? A. Their advertised rate is 26 cents a bag without rebate.

3808 Q. I mean do you get rebates at the other end? A. No, it is a straight rate.

Q. A special rate to you? A. No, a special rate advertised.

Q. Contract? A. No, they advertise it, their regular advertised rate is 26 cents when the other lines is 50.

Q. When is that, now? A. Now they have raised their rate to 30 cents, a few days ago.

Q. Is this on a 75,000 bag shipment? A. 25,000.

Q. You mean as an advertised rate? A. The rate offered to us by letter, the advertisement in the Brazilian papers and New York papers was 26 cents for 25,000 bag lots.

Q. What was it for a smaller lot?

MR. BALDWIN: By one steamer? 3809
THE WITNESS: By one steamer.

Q. What was the rate for smaller lots? A. I think it went up to 30 cents, according to quantities, whether 10,000 or 5,000.

Q. Have you received any coffee by the Lloyd Brazileiro in the last three months? A. Yes, sir, it was just about three months ago, at 26 cents.

Q. And was that a 25,000 bag shipment? A. That was 45,000. 3810

Q. Have you had any shipments less than 25,000? A. Yes, we shipped one I think, 10,000. I think that was 27 cents.

Q. When? A. That was, I think, about a year and a half ago.

Q. Do you make special contracts with them for separate shipments? A. No.

Q. You make the contracts in the form of a letter with them, in such letters, is that it? A. I think sometimes it has been made at the other end and sometimes here. Since 3811 the rate became an established advertised rate there has been none. Before that it was by conference, sometimes at one end and sometimes at another.

Q. Where are those advertisements of rates to be found? A. In the Journal of Commerce. I have a number of copies of them. I have a letter here.

Q. Are you still chartering ships? A. Yes.

Q. And you bring large quantities of coffee here in your own ships? A. We do, right along. We haven't within the last two or three months.

Q. What? A. We haven't within the last two or three 3812 months. That 45,000 bags is—we have not within two or three months had any coffee from Brazil except the 45,000 bags on the Lloyd Brazileiro boats at 26 cents.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Were the documents that you refer to in answer to Mr. Burlingham's question that fixed the rebate at 10 per cent. and 5 per cent., these Exhibits 11 and 12 and 13. copies of the documents that you referred to? A. Yes.

3813 RE-CROSS EXAMINATION by Mr. Burlingham:

Q. You say the reason you did not bring a law suit against Lamport & Holt or the conference lines after you had got this so-called evidence together or laid the basis for it was because the thing all got into the public. What do you mean by that? A. I mean that the time the shipments or rates or the whole thing—that it drifted along and we simply accumulated our evidence, which drifted along, and it never was done. You can see, this is from 1909 to 1911; two years between the two conversations.

3814 Q. Did you mean a private law suit between yourselves, Arbuckle Brothers, and the conference lines or Lamport & Holt or other lines, or did you mean an action by the Government? A. We meant a private law suit. We thought we saw the time approaching when we would have to make a private suit to test that question.

Q. Didn't you go down to Washington yourself in order to bring this to the attention of the Department? A. No. I personally went down on a summons from the Committee.

3815 Q. What Committee was that? A. That was the Committee from the House of which Mr. Henry was the Chairman, the Committee of Investigation. Arbuckle Brothers were requested to be there, and several others were there.

Q. Didn't you go to the Department of Justice to take it up or have them take it up? A. I did not.

Q. Didn't you go to Senator Root? A. No, sir.

Q. Or to any of the legislators? A. No, sir.

Q. You simply went in response to a subpoena? A. Yes, and the statement was one that I personally wrote out

3816 and submitted to our regular attorney before I actually put it in.

Q. At whose suggestion were you subpoenaed? A. I don't know.

Q. Why should they pick out the financial manager of Arbuckle Brothers as a witness before the Congressional Committee.

MR. BALDWIN: I object to a speculative question of that kind, what might be in the mind of somebody else.

THE WITNESS: I don't know. Others were subpoenaed. There were a number of parties subpoenaed to go before this Committee.

Q. Who were some of the others from your firm? A. 3817
Our firm? I don't know. I did not expect to go in the first place. They were subpoenaed. My remembrance is that I have been down two or three times. My remembrance is that Mr. Jamison was subpoenaed and found he could not go.

Q. And he selected you as the goat? A. And I went.

Q. Did you take it up with the District Attorney here in New York?

MR. BALDWIN: I object to that.

3818

A. No.

Q. You had nothing to do with that whatever? A. No, I had nothing to do with that, except that the District Attorney, I think, on statements which we made in Washington to that Committee, came to me for certain information, as to whether I could give him further information and so forth, but not at all on our initiative, and he did not use the suggestion. What he came for was the British publication of the conference lines, the whole question over there, and I had those volumes, and he wanted to see 3819
them.

Q. You mean those blue books? A. Yes.

Q. The investigation of the shipping rings? A. Yes.

Q. You furnished them to the Government? A. No, I did not furnish them. I had them and he wanted to know if I had them, and I told him I had.

Q. Whatever grievance you had or your firm had against the conference lines, you thought it was unnecessary to do anything after this matter became, so to speak, a rather public question? A. We were watching it all the time. 3820

Q. Are you watching it still? A. Yes.

Q. And making tenders to lay a foundation for law suits still? A. We wanted to know whether a regular liner can refuse to take from a regular shipper goods because he did something that did not suit that line.

Q. And you have not come to an answer still? A. No.

Q. And are you still making and having them refused, making tenders of coffee for boats to lay the foundation for future law suits, is that so? A. Not necessarily for future law suits. We want evidence if we get into a law suit, that is all.

3821 RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. These exhibits for identification, being the tenders and so forth, letters from your representatives in Brazil in reference to tenders, they are purporting to be copies of letters from your office in Brazil in response to instructions you had given to tender coffee there?

MR. BURLINGHAM: Objected to.

A. Yes.

3822 Q. And you had the coffee there? A. Yes.

Q. And always had it? A. We always had it when we tendered it.

Q. Whenever you tendered coffee you had it? A. Yes.

Q. Before there was any contemplation to test out the question of whether or not a regular line could refuse any shipper who tendered his commodities at the current rate on the berth, you had had your shipments before that refused, I suppose?

MR. BURLINGHAM: Objected to as leading and not
3823 within his knowledge.

THE WITNESS: Well, that is my knowledge on information, sir.

Q. That is sufficient.

MR. BURLINGHAM: I insist the witness be allowed to finish his answer and shall not be interrupted by Mr. Baldwin until he has completed his answer.

Q. (Question read.) Before there was any contempla-
3824 tion to test out the question of whether or not a regular line could refuse any shipper who tendered his commodities at the current rate on the berth, you had had your shipments before that refused, I suppose?

MR. BURLINGHAM: Objected to as leading and not within the knowledge of the witness, by his own statement.

THE WITNESS: They had refused the shipments. I make that of my own knowledge based on the inability of our firm in Brazil to execute orders given by me for the firm, and the reply being that the shipments would not be received.

Q. Now, you have no intention whatsoever of bringing 3825
a private law suit if the Lamport & Holt, or any of the conference lines would accept your shipments at current rates? A. None whatever.

Q. And even without the rebates? A. Without the rebates, even without the rebates.

Q. And so that in answer to Mr. Burlingham's question that you stated that these tenders were made at times for the purpose of testing the question, you had had experience before that where they had not received them, and then when you had coffee to ship you tendered it; is that 3826
the idea? A. Yes.

Q. And if it became available as evidence, just so much to your benefit, was that it? A. We intended is should be, yes.

Q. You do two kinds of business, don't you, on your own account, and what they call cost and freight business? A. Yes.

Q. Will you just state so the record will show it definitely the two kinds of business, and what constitutes it? What is a cost and freight business, and what is the 3827
method of your own business? A. The cost and freight business is done by a sale by us for account of our Brazil firm to a party in the United States at invoice cost and freight, and the party furnishes a letter of credit so that when Arbuckle & Company have obtained a bill of lading in accordance with the terms of the letter of credit their interest in the matter ceases, and the buyer of the cost and freight has control. He contracts for the time during which it shall be shipped.

Q. Now, that is for small shipments, I suppose, and not 3828
cargoes as a rule? A. Shipments of 250 to 5,000 bags.

Q That of course, would not be a full cargo? A. No.

Q. Is that a large branch of your business? A. It was at one time.

Q. Now, do you distribute your coffee pretty generally over the United States? A. All over the United States.

Q. That is, to say, you have customers all over the United States? A. All over the United States.

Q. Now, with reference to the business where you import for your own account. You do that largely, do you not by chartering? A. By chartering, yes.

Q. Now, you say at one time you did quite a large cost

3829 and freight business and that now there is comparatively little of it. What is the cause of that? A. The fact that the shipments are going so largely by New Orleans through the interior—St. Louis, Chicago and St. Paul and up through there, and that the difficulty of chartering a boat for both New York and New Orleans, or the difficulty of our having accumulated enough orders from others, cost and freight, to fill a boat for New Orleans. It is practically driven out of our line.

Q. Would that business have drifted away if you could
3830 ship by the conference lines? A. No, and we would not ask for rebates.

Q. Now, who ultimately pays the freight?

MR. SPOONER: That calls for an opinion.

THE WITNESS: It forms part of the price.

Q. In other words, the consumer has to pay it? A. The consumer, the interior buyer pays it.

Q. Regardless of how it is imported? A. Regardless of how it is imported, and regardless of rebate. The rebate
3831 goes to the party who makes the contract with the——

Q. You mean the shipper? A. I mean the shipper.

Q. And the consumer does not get that? A. Not generally. He may get it in getting a low price. If the rate is 50c. and the party is a 200,000 bag shipper and gets 10% off of that, it is about enough profit for him to work on, and he may sell the coffee at exact cost, where he would lose money if he did not get that rebate.

Q. How about the smaller shipper? A. The smaller shipper does not get it as a general proposition.

3832 Q. With reference to this Exhibit 186, a letter from Mr. Cook, you knew, did you not, that Mr. Arbuckle had been in London and seen Mr. Cook? A. Yes.

Q. And this conversation that you had with Mr. Daniels and the others was before the date of this letter of November 28th? A. It was before the date of the letter.

Q. When you charter it is always for full cargoes? A. Yes, except with Lloyd Brazileiro where they make their lowest rate for 25,000 bags. When we charter a vessel we charter for full cargo.

Q. Now, that would get you no small shipper who ships in parcel lots because he don't charter at all? A. He doesn't charter at all.

Q. And in this tender that you made or these negotia- 3833
tions with Mr. Daniels, you are willing to pay the schedule price for all small shipments, for parcel shipments; that is the idea, isn't it? A. Our propositon was to go into the rebate just as it existed, with everybody. They get 10% on 200,000 and so forth. We would go in on all that, but independent of that we wanted them to add to their list of 5% on 100,000 and 10% on 200,000, we wanted a fixed rate on a full cargo as part of their system.

Q. In other words, the offer of a lower rate only was on the large shipments of 75,000 and more, and anything less 3834
than that you would stand all in the same boat? A. Yes, all in the same boat except that the man who shipped 100,000 does not stand in the same boat now with the man who ships 200,000. That was simply the different matter.

RE-CROSS EXAMINATION by Mr. Burlingham:

Q. You have no personal knowledge of any refusal on the part of any of the conference lines in Brazil to accept a single bag of coffee, isn't that true? You have no personal knowledge of it? A. I consider I have personal 3835
knowledge, yes.

Q. And that personal knowledge consists of letters from Brazil to you here or to your firm? A. I have additional evidence. You are speaking now about—you are going outside. You say, "the conference lines." We come to Gerhard & Company. That is another proposition. I have certain documents here——

Q. I ask you whether you can give a single instance, from your own knowledge, of the refusal of any boats of the Lamport & Holt Line to accept any cargo offered by 3836
your firm or their representatives in Brazil? A. My own knowledge is the instructions to ship by certain vessels and the reply they could not do it, they would not receive it, and enclosing documents in response, which I have filed.

Q. Then, your knowledge is derived from a letter received from Brazil, from your representative in Brazil, with enclosures, is that right? A. So far as that knowledge is concerned.

Q. Have you any other knowledge in regard to Lamport & Holt? A. As I stated before, I said to Mr. Daniels that that was our contention, that they would not receive it at all.

3837 Q. I am not asking for contention; I am asking for your knowledge of facts, not what somebody told you but what you know yourself? A. When Mr. Daniels did not answer the question when I said to him it is so, that is personal knowledge.

Q. You mean to say that the fact that in a conversation with Mr. Daniels you referred to a pile of documents on the table and he laughed, is proof or knowledge on your part of tenders of coffee in Brazil, several thousand miles away?

3838 MR. BALDWIN: I object to that as speculative.

THE WITNESS: That is not what I am talking about at the present time. I am referring to the conversation with Mr. Daniels, where I put it straight, and I will give it if you want it.

Q. Have you got it? A. I now refer to my notes.

Q. Give it? A. The conversation began by Mr. Daniels saying he wanted Arbuckle Brothers to come back, and talked about the superior service. I said: "Our present
3839 trouble is that you will not take our coffee on any terms on any vessels you put on the berth and advertise it open to all shippers. We would come back if you will give us a rate on full steamer cargoes close to the rate that we can charter a steamer."

Q. Is that all? A. Mr. Daniels acquiesced to that.

Q. What do you mean by that? A. I considered he meant that was the situation.

Q. How did he know any more than you know what was happening in Brazil? A. I think he knew what was hap-
3840 pening in Brazil.

Q. Did he say that? A. He asked what rate we wanted.

Q. That is the best answer you can give? A. That is the best answer I can give.

Q. Apparently from your re-direct examination it appears that you are now in the carrying business yourselves, are you? Do you publish rates? A. No.

MR. BALDWIN: I didn't say anything about that. I asked for cost and freight business and their own chartering, that is all.

Q. Do you carry these small shipments on vessels which

you have chartered? A. We have done so on an occa- 3841
sional matter.

Q. And you charge freight for it? A. We sell it at cost and freight.

Q. That freight is the charge you make for transporting it on these chartered steamers? A. Yes.

Q. You issue bills of lading, I suppose? A. Yes.

Q. And in those bills of lading the amount of freight that is charged for the transportation is inserted, I suppose? A. Yes.

Q. And that goes to make up the price on the coffee to 3842
the importers here? A. Yes.

Q. Well, then, you seem to be a competitor of these conference lines, and the Lloyd Brazileiro to that extent, are you not? A. We don't charter a boat——

Q. You said something about the different rates of the Lloyd Brazileiro, and I am afraid I interrupted you when you went to get them. Have you got them in your papers there? A. Yes. I have a letter here. The advertisements I haven't here, but I will produce them.

Q. This document which you produce seems to be a 3843
typewritten copy of a cable from Arbuckle & Company in Santos to Arbuckle Brothers in New York, dated March 21st, 1912; is that right? A. I am looking for the original document. There is the letter of the Lloyd Brazileiro giving their rates there.

Q. You now produce what appears to be an original letter from the Lloyd Brazileiro to Arbuckle Brothers, Water Street, Manhattan, dated March 21st, 1912? A. Yes.

Q. Is that what you mean by saying published rates? 3844
A. No. I will produce a letter and the advertisement in the Journal of Commerce.

Q. Published rates? A. Published rates.

Q. Substantially the same as this? A. That is the same as the cable and that is the reason I handed that to you.

Q. Now, from these documents that you produce it appears that the rates on shipments of coffee from Santos and Rio from that date, March 21, 1912, was to be on 25,000 bags or more, 26c. per bag, and on 10,000 bags or more 28c. per bag, and on 5,000 bags or more 30c. per bag, on 1,000 bags or more 32c. per bag, and on under 1,000 bags, 35c. per bag. That is what you say were the rates at that time? A. Yes, that is what I refer to.

3845 Q. And you can produce a printed advertisement to the same effect? A. Yes.

Q. Will you do that, if you please? A. I will.

MR. BALDWIN: I ask that this letter and this copy of cable be marked for identification.

Marked Petitioner's Exhibit 233 and 234 respectively for identification.

RE-DIRECT EXAMINATION by Mr. Baldwin:

3846 Q. Mr. Humphrey, when you spoke a moment ago of charging the customers you have with the freight on the coffee you import for them you did not mean by that to make a profit out of the trade? A. No, the freight is the same.

Q. You charged them precisely what it cost you? A. Yes.

Q. So as to lay the coffee down to them with freight added to the price of the coffee? A. Yes.

Q. You bring those up along with full cargoes frequently, I suppose? A. Yes.

3847 Q. If you did not bring them up as a part of a full cargo and brought them up in parcels the freight would cost more to the consumer, wouldn't it? A. We could not bring it up. There is no way to bring it except by the Lloyd Brazileiro.

Q. If you brougth it up by the Lloyd Brazileiro it would cost a consumer more, wouldn't it? A. Yes.

3848 WILLIAM A. JAMISON, being first duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Montgomery:

Q. What is your business? A. Coffee and sugar business.

Q. Are you connected with Arbuckle Brothers? A. Yes, sir.

Q. Are you a member of the firm of Arbuckle Brothers? A. Yes, sir.

Q. I show you Exhibit 184 and ask you if that is a copy of a letter to Busk & Daniels sent by Arbuckle Brothers and whether you saw that letter before it was sent, the original of that exhibit? A. Yes, sir.

Q. This is a copy and you saw it before it was sent to 3849
Busk & Daniels? A. Yes.

Q. I show you Exhibit 185 and ask you if that is a copy of a reply to the letter Exhibit 184 that I have just shown you? A. I believe so, yes.

Q. Now, have you with you the original letter of which 185 is a copy? A. I have.

Q. That is the letter that was received by Arbuckle Brothers from Busk & Daniels in reply to the letter, Exhibit 184, is it? A. Yes.

Q. Now, I notice that this letter has on it a typewritten 3850
memorandum reading: "Over the telephone and so forth." Will you tell how that came to be put on? A. I imagine that that was put on by Mr. Humphrey, to whom I had repeated the conversations that I had with Mr. Daniels.

Q. Just tell us about that conversation with Mr. Daniels. What was that conversation that took place after the receipt by your firm of that letter of May 4th, a copy of which is Exhibit 185? A. My impression is that it was after.

Q. After that letter was received? A. Yes. 3851

Q. And what was the gist of the conversation?

MR. BURLINGHAM: Ask for the conversation itself.

THE WITNESS: I am afraid I cannot remember the conversation; Mr. Humphrey noted it down.

Q. As near as you can remember, what was the talk? A. Well, the talk was to the effect that they had not answered our question, he had dodged the point in question, but would take it up later.

Q. That was—— A. That was the sum and substance 3852
of the conversation.

Q. Who do you mean said they had dodged it? A. Mr. Daniels said that.

Q. After having that talk with Mr. Daniels, what, if anything, did you do? Did you make a memorandum of that conversation? A. My recollection is that I repeated it to Mr. Humphrey.

Q. Repeated the conversation to Mr. Humphrey? A. Yes.

Q. D you know whether Mr. Humphrey made a memorandum at that time? A. He told me he did.

3853 Q. He told you at the time or about that time that he did? A. No, later.

Q. And you recall, you say, that Mr. Daniels did say over the phone that they had dodged the question? A. To that effect.

Q. That is to say, the question that was set forth in your letter of May 4th which you saw before it went out, Exhibit 184? A. Yes.

MR. BALDWIN: I ask that it be marked for identification.

3854 Marked Petitioner's Exhibit No. 185-a for identification.

CROSS EXAMINATION by Mr. Burlingham:

Q. You are a member of the firm of Arbuckle Brothers? A. I am.

Q. And have been for how many years? A. Since 1891.

Q. What other partners are there now? A. The other partners are Mrs. Jamison and Miss Arbuckle at the pres-
3855 ent time.

Q. Your mother? A. My mother and aunt.

Q. And that firm is? A. A copartnership.

Q. And what is your Brazilian house? A. Arbuckle & Company.

Q. Who makes up that firm? A. The same parties.

Q. And where are their offices? A. They have offices in Santos and in Rio.

Q. You have been in the coffee business then since 1891 yourself? A. Yes, sir. Before that. I became a member
3856 of the firm since then.

Q. How long have Arbuckle Brothers been in the coffee business? A. In the '70's some time.

Q. And the sugar business, too? A. Only since 1898 in the sugar business.

Q. And also in the wrecking business, aren't they, raising vessels? A. No, sir.

Q. Was that Mr. John Arbuckle alone? A. Personally, a personal matter.

Q. And do you own ships? A. We do not.

Q. Have you never owned them? A. We never owned a ship, to my knowledge.

Q. But you have chartered ships? A. Yes.

Q. Largely? A. Yes, sir. 3857

Q. For your own shipments principally? A. For our own shipments.

Q. Are they ever put on the berth? A. That is a detail I could not answer.

Q. In Brazil? A. I could not tell you.

Q. Have you been to Brazil? A. I never have.

Q. Are you exporters of merchandise to Brazil as well as importers? A. We are not.

MR. BALDWIN: This is absolutely foreign to any question I asked on direct. If you insist upon ask- 3858
ing that he is your own witness.

Q. Formerly, in years back, you shipped your coffee from Brazil from the Lamport & Holt Line, didn't you? A. Yes, sir.

Q. Exclusively? A. Yes, at times in the earlier days.

Q. Under contract with them? A. I did not attend to the detail of it at those times, and I could not tell you.

Q. And when did you cease to ship by them? A. Why, I should say 10 or 12 years ago, probably more.

Q. In those days how were the rates determined, by 3859
contract between you and them?

MR. BALDWIN: I object to this as being immaterial, irrelevant and incompetent and not pertinent to any question I asked on the direct.

Q. (Question read.) A. I imagine so. I don't know absolutely.

Q. Didn't you have to do with it? A. I did not.

Q. Can you give with greater accuracy the date when you ceased to ship by the Lamport & Holt Line? A. No, 3860
I am not familiar with the detail of that at all.

Q. Well, you know that you paid in proportion to the amount that you shipped at that time? A. I know in a general way, yes.

Q. And you got a heavy discount, I suppose?

MR. BALDWIN: I object to that as irrelevant, incompetent and immaterial. That is even going back to the time you say it is not pertinent to any issue in this case.

Hearing adjourned to Wednesday, June 11th, 1913, at ten o'clock A. M.

3861 NEW YORK, June 11th, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER; by Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*

MESSRS. SPOONER & COTTON; by J. C. Spooner,
3862 Esq., for Paul Gottheil, *et al.*

MESSRS. CONVERS & KIRLIN; by Parker Kirlin, Esq., and M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

THOMAS A. SPARKS, recalled:

DIRECT EXAMINATION continued by Mr. Montgomery:

Q. Mr. Sparks, you have already testified that Funch, Edye & Company had in its employ a man named D. J. Donovan at Chicago, I believe? A. That is correct.

3863 Q. How long has he been in your employ? A. I testified at that time that I did not know; that he was there when I came.

Q. That was in 1907? A. 1907.

Q. What is he employed to do? A. He solicits freight in the west.

Q. For what? A. For all our services.

Q. For all of your services? A. Yes.

Q. How is he paid, on salary? A. Salary, yes.

Q. Any commission? A. No.

3864 Q. Does he solicit freight for the service from New York to Brazil? A. Yes. I don't think he books very much, but he solicits freight for there.

Q. Do you keep track of what he does, what is booked for you in that service? A. I really don't know the system, Mr. Montgomery.

Q. Who would know? A. Mr. Betts would know about that.

Q. In what area does he solicit freight for your Brazil service? A. I think anybody that he can reach in the west.

Q. That is, it is not confined to Chicago? A. No.

Q. He travels? A. No, very little. 3865

Q. Do you know anything about what competition he meets with in soliciting freight for your Brazil service? A. I have no idea.

Q. You never have occasion to discuss it with him? A. No.

Q. Do you recall in the year 1908 a question arising as to whether your line should call at Savannah for cargo? A. I had very little to do with the Brazil service in 1908; it was only in the latter part of 1908 that I became connected with it at all and I have no recollection of the Sa- 3866
vannah question.

Q. You were a partner in 1908? A. Yes.

MR. SPOONER: You mean in the latter part of 1908?

THE WITNESS: In June, 1907, I became a partner.

MR. SPOONER: You had nothing to do with this in 1907?

THE WITNESS: Nothing until the latter part of 1907.

3867

Q. Weren't these broad questions of policy, what ports you should go to, taken up with you, Mr. Sparks? A. No, sir.

Q. During that time? A. No, sir.

Q. You do not recall any question arising at all about your going to Savannah? A. No, sir, no recollection whatever.

Q. At any time within the period of your connection with Funch, Edye & Company? A. No, I have no recollection.

3868

Q. Do you recall whether you ever have gone to Savannah? A. I think not, but I would not be sure of that.

Q. You do not recall ever having been asked to go to Savannah by any shippers? A. No. It is possible there may have been enquiries for resin or some other parcel of stuff from Savannah or other southern ports.

Q. If so you never had responded by going there? A. I testified that I am not sure, that it is possible a boat may have gone in there in some of the earlier days, but I do not recall it.

Q. You do not recall taking up with the conference at London the question of whether you could go to Savan-

3869 nah or other ports in the United States? A. I think there have been some cables asking those questions.

Q. From the conference here to the conference in London? A. Yes.

Q. Do you recall when those were sent? A. No, I think there was one quite recently.

Q. Do you recall what position the conference lines took about it? A. No, I don't know whether they have replied yet. I have never seen the reply.

Q. What was the nature of the enquiry; was the en-
3870 quiry whether a single line might go to a southern port and from there to Brazil, or was it, on the other hand, a question of whether the conference itself would undertake to put a boat on? A. I think as far as I can remember the question was asked whether they were interested in a parcel from one of the southern ports, perhaps Savannah to Brazil, and if so what steamer was available for the business.

Q. And that you have had no reply to? A. I think not.

Q. And you cannot recall any instance in which your boats served any other port than New York? A. No, I
3871 cannot recall. It is possible they did, but I do not know.

Q. In addition to your agency for the Hamburg Lines and other lines in their traffics, you are agent for owners of ships, aren't you, to charter them? A. Yes.

Q. And you do a large business in that line, don't you? A. Yes, quite a large business.

Q. By you I mean Funch, Edye & Company? A. Yes.

Q. About how many ships in the course of a year do you charter as agents in various trades? A. I imagine about five or six hundred.

3872 Q. Abut five or six hundred ships in a year? A. Yes.

Q. And those I supopse go to all parts of the world? A. Yes.

Q. How many of them have you chartered for the trade from here to Brazil? A. I do not——

Q. The Hamburg Line itself sometimes runs chartered boats in the service from here to Brazil? A. Yes.

Q. And as to those boats, do they charter them through your office? A. As a general rule they charter them through William Voelckens & Company of Hamburg, our connection there.

Q. What do you mean by your connection? A. Mr.

Voelckens is a partner in the firm of Funch, Edye & Com- 3873
pany

Q. Who are the other partners in Voelckens & Company? A. Paul Gottheil.

Q. Just the two partners? A. Yes.

Q. Now, these ships that you charter in various trades, name some of the classes of cargo that they carry? A. Coal, oil, timber, cotton, steel, phosphate, grain—is that sufficient?

Q. What else that you think of? A. I could not think of any more; that is why I asked if it was sufficient. 3874

Q. Cement? A. I do not recall any cargoes of cement.

Q. Do you know whether cement does move by tramp steamers, chartered steamers often? A. There have been a few charters to Brazil.

Q. There have been? A. Yes.

Q. Being charter agents in such a large way you keep in touch, of course, with the charter rates all over the world? A. Yes.

Q. And to some extent with the reasons for the rates? A. Yes.

Q. You are rather expert, aren't you, on the question 3875
of charter rates? A. Yes, we so regard ourselves.

Q. Is it not a fact that charter rates to Brazil are higher because of the lack of return cargo? A. That is an influence to some extent. The tramp steamers can usually get a return cargo from the Plate, or, if the Plate is out of season, or the rate is too low, they shift and go in ballast to the Gulf and get their next cargo there.

Q. In other words, they go to the Gulf on their expense and without compensation? A. Well, they are free agents, you know; they could stay in Brazil if they wished to. 3876

Q. I don't think that is quite responsive, Mr. Sparks. What I asked you was, by saying they go in ballast you mean they could take a trip to the Gulf for which they get no compensation, that is what you mean? A. Yes.

Q. And they can go to the Plate, for which they get no compensation? A. Yes.

Q. How far is it from Brazil to the Gulf? A. Approximately 4,000 miles.

Q. Do you know about what it costs to run one of your average ships, or the average chartered ship, from Brazil to the Gulf in ballast? A. It depends whether you are

3877 talking from an owner's point of view or the charterer's point of view altogether, because running the boat up I suppose would be—that is, the actual cost to an owner—would be approximately $5,000.

Q. And to the Plate? A. It is a much shorter run; it would depend where you started from. If from South Brazil it is only overnight; from Santos it might cost you $2,000, or perhaps less than that.

Q. How much from Rio? A. About that.

Q. How much from Pernambuco? A. Just the differ-
3878 ence in the steaming, a few hundred dollars more.

Q. Bahia; how much from Bahia? A. A few hundred dollars more.

Q. More than the $2,000 you mean? A. Just the steaming cost.

Q. You said it cost about $2,000 to go from Rio to the Plate? A. Approximately, yes.

Q. And then you mean from Pernambuco and these other ports it will cost a few hundred dollars more than these $2,000? A. Because they are a further distance from the River Plate.

3879 Q. Doesn't that have its influence upon the rates of tramp tonnage to Brazil? A. Certainly.

Q. And a very large influence, isn't it? A. Well, not as large as a good many other things. The competing freights from here to other parts of the world would have more influence upon the rates to Brazil than the fact that they would have to shift a few thousand miles in ballast for their next cargo.

Q. Of course, I suppose there would be a number of things that would enter in, but I do not care to go into
3880 all of those. Nevertheless, it would affect all that, have a very large influence, wouldn't it, on the rates? A. Yes.

Q. Did I understand you to say that as a rule vessels cannot get cargo from Brazil? A. As a rule they cannot.

Q. And that is almost a universal rule, isn't it; I am talking, of course, about chartered vessels and not about your line, or any regular line? A. Yes, it is the custom for tramp steamers arriving in Brazil to shift either to the Plate or the Gulf, or some other direction for their next cargo.

Q. Because of the lack of cargo at Brazilian ports? A. Because of the lack of cargo at Brazil.

Q. The regular lines get pretty good cargoes of coffee? 3881
A. I don't know anything about the cargoes by the other lines; I know that our line gets very small cargoes.

Q. Do you recall your line ever bringing a boat back in ballast? A. Oh, yes.

Q. When? A. Often.

Q. Are you familiar with this statement prepared by Mr. Betts as to the amount of coffee carried from Brazilian ports and the miscellaneous cargo carried from Brazilian ports by the German Lines, Petitioner's Exhibit 229? A. No. 3882

Q. Well, I call your attention to this exhibit, and ask you to point out in that exhibit any ship that came back in ballast from Brazil? A. I see a number of them there (after examining exhibit).

Q. That came back in ballast? A. Yes, and a very great many more that to all intents and purposes were in ballast.

MR. SPOONER: That would not be apparent to anybody except those who are familiar with it?

THE WITNESS: I think it would be very apparent 3883
to Mr. Montgomery if he would look at it.

Q. How many of them do you find, Mr. Sparks, in the period—that is, from 1907 to date, isn't it? A. If you will give me a little time and a piece of paper.

Q. Yes. A. (After examining exhibit.) I find on analyzing the statement handed to me that out of 95 steamers not a single one had a full cargo; five were actually empty; twenty-nine were practically in ballast and on an average they were only 44% full and 56% light. 3884

Q. Give the steamers and the dates of those that came in empty?

MR. BALDWIN: That will include the year, Mr. Sparks.

A. You understand that I am giving this information only from this statement that you handed me; I have no personal knowledge of it.

Q. That was produced by Mr. Betts, and I have no doubt that it is accurate? A. Here is the steamer *Nassovia* on the 11th of April——

3885 MR. BALDWIN: What year?
THE WITNESS: 1912.

Q. Do you find any before that?

MR. BALDWIN: Begin in 1909 and give the number that came back in the ballast each year.

THE WITNESS: I can begin in 1912; that seems to be the first one.

Q. None came in, at least before 1912, you mean? A.
3886 No, according to the figures here.

Q. The one of April 11th, 1912, is the first one since 1907 that came back in ballast, is that correct, Mr. Sparks? A. Yes, as I see it on this statement, yes.

Q. What is the next one? A. Then the *Woglinde*, May 31, 1912. I see she had 100 tons of miscellaneous cargo.

Q. What else? A. The *Nassovia* again—she seems to be an unlucky ship—on the 15th of August, 1912. She had 146 tons of miscellaneous cargo.

Q. What else? A. The *Woglinde* on the 21st of Sep-
3887 tember, 1912; she had 62 tons, and the *Wellgunde* on the 25th of August, she had 24 tons.

Q. Those dates which you have read are the dates of arrival here, aren't they? A. I don't know.

Q. Well, as a result of that, I suppose, that lack of cargo on these boats, the price of freight on coffee was dropped by the conference lines, wasn't it? A. I don't know anything about the rates on coffee. I have testified to that several times in my previous appearance here.

Q. Do you know where the rates on coffee are fixed? A. No, I don't know anything about it.

3888 Q. Do you know whether these boats that you have just mentioned as having come in in ballast or light were loaded at the same time that there were other conference boats in Brazilian ports loading with coffee? A. I don't know.

Q. If that was a fact that would tend to explain the failure of these boats to get cargo, wouldn't it? A. I don't know that it is a fact.

Q. I am asking you, assuming that it is a fact, if we were to assume that that was a fact, that that explains it, wouldn't it? A. I don't know enough about coffee business to assume anything, Mr. Montgomery.

Q. You know enough about the steamship business to know that if all the boats of the conference lines should go to one port at the same time they probably would not all get cargo, don't you? A. Well, that would be a natural inference. 3889

Q. And if two or three of them went there at the same time they would not have the same chance of getting full cargo as they would if they went at different times, would they? A. I should imagine not, but I do know that steamers have laid in coffee ports for forty and fifty days to get cargoes. 3890

Q. Your steamers? A. Our steamers.

Q. When? A. And therefore, during that period, there must have been a great many conference boats in and out.

Q. Within what time have your boats remained there forty days and forty nights? A. I cannot give you the period, but it is available for you if you care to have it looked up.

Q. I would very much like to have it looked up; I would like to have every instance that you can find in which your boats laid in Brazil for an unusual period of time. Now, what would be the normal length of time that one of your boats usually lie in Brazil in order to get cargo in Brazilian ports? A. That would depend on what you call usual. A boat can be loaded if the cargo was available in three or four days, but I don't know what the custom is down there. 3891

Q. You keep track of your boats for the purpose of getting them here to load downward, don't you? A. I am afraid I do not. After they sail from here I rather disregard them until they are back again for another load.

Q. You don't wait until they actually steam into port before you think about loading them? A. No. 3892

Q. You know something about when they are coming, don't you? A. We know when we are going to have another despatch. Whether it was the boat that previously left here in January or December does not interest me very much.

Q. But, nevertheless, you would have to keep some track, wouldn't you, of what becomes of the boats that you send out and expect back again? A. That is done by the Hamburg-American Line office here.

Q. Isn't it a fact also, Mr. Sparks, that at certain pe-

3893 riods of the year coffee moves in larger volumes than at others? A. Mr. Montgomery, I know nothing about the coffee business. By hearsay I know they used to have a seasonable movement of coffee, and that now-a-days it is extended so that it moves practically all the year around, but I know that very superficially and by hearsay.

Q. Now, you testified that a tramp steamer going to Brazil would have to get a larger pay from the fact that it has no cargo to bring back, haven't you? A. Yes.

Q. Isn't it also true of the line steamers and of the con-
3894 ference line steamers that the fact that they do not get full cargoes back makes your rates higher? A. That should be an influence, but I don't think it is.

Q. How can it fail to influence the lines in making their rates? A. For this reason, that we have adopted the same tariff as is in effect from Europe, whereas the European steamers, I understand, usually get a cargo back.

Q. Your line, the Hamburg Line, used to carry passengers to Brazil and back again, didn't it? A. Yes.

Q. What kind of passengers, steerage or did you have
3895 first class service? A. I don't know. I think they discontinued carrying passengers about the time I had any connection with the service.

Q. You don't mean about the time you had connection with Funch, Edye & Company? A. No, at the time——

Q. You were connected with the Brazil service? A. Yes.

Q. Do you know in a general way the kind of steamers they ran in those days? A. Yes, I don't think it was a very silk stockinged class, if that is what you mean.

Q. I mean it was a regular passenger service, wasn't
3896 it? A. I don't know anything about it at all. We had nothing whatever to do with it. I have already testified to that effect, here.

Q. You know whether the boats were of the same class that you are running now, don't you? A. I don't think I ever saw any of the boats that were in there at that time.

Q. Do you know anything about the time they made? A. No.

Q. You know in a general way that the passenger steamer makes faster time as a rule and prompter sailings? A. Not necessarily, because some steamers that were

carrying passengers regularly were afterwards used for freight. We began carrying gasoline instead of passengers because it pays better. 3897

Q. Are those passenger steamers now running in the Brazil trade? A. Not the same ones.

Q. Are you running passenger steamers in the Brazil trade? A. Yes.

Q. But not carrying passengers? A. I think not at present; but that would not come within our province, and I know nothing about it.

Q. Do you mean to say that you don't know whether the boats that you book cargo on are carrying passengers as well as cargo? A. I believe they are not. 3898

Q. You know that, don't you, Mr. Sparks? A. No, I don't know it. They may be bringing some passengers up from Brazil and I wouldn't know anything about it.

Q. You say some of those boats are now running in the service? A. Not the same ones.

Q. But other passenger boats are? A. Yes, more new boats with passenger accommodations.

Q. That is, that you have built for the service? A. That our principals have built for the service. 3899

Q. Built particularly to go into the Brazil trade? A. Yes, I believe so.

Q. And they are passenger ships? A. They have passenger accommodations.

Q. But you don't know whether they are carrying passengers or not? A. I believe they are not.

Q. Do you know why they build passenger ships to go into the freight business? A. Because they probably intend to go into the passenger traffic too.

Q. In that traffic? A. Probably. 3900

Q. You don't know whether they made better time in those days, those ships, than the ships that you are now running? A. No; I don't know.

Q. How many new ships have been built for the Brazil trade, these passenger ships that you speak of, for your line? A. I think there are three or four of them.

Q. And how many sailings do those three or four make in a year? A. They take approximately two and a half to three months for a round trip I think.

Q. That would be about four sailings a year then? A. Yes, about that.

3901 Q. Apiece? A. Yes.

Q. About twelve sailings a year all told? A. That is about it.

Q. And the balance of them are mainly chartered boats, aren't they? A. No, they have their own boats in the service now almost entirely.

Q. You have solicited freight to some extent for the Brazil service? A. Yes.

Q. And negotiated contracts with shippers? A. You mean personally?

3902 Q. Yes? A. No, I don't think I ever made a contract.

Q. You have talked with them about contracts? A. Yes, one or two shippers.

Q. What inducement do you offer to the shipper for entering into a contract with you? A. I don't quite understand your question.

Q. What do you have to urge to a shipper why he should enter into a contract and bind himself to ship by your lines? A. We offer him service; that is the only inducement we have, Mr. Montgomery.

3903 Q. Don't you offer him a lower rate than he would have to pay if he shipped not under a contract? A. Occasionally, yes.

Q. Isn't that the only inducement that you have to offer him for entering into a contract? A. Well, we make a great many contracts at our tariff rate.

Q. What is the inducement to enter into those? A. Because the shipper wants to get room for his cargo.

Q. You mean a contract for specific quantities? A. Yes.

Q. I have in mind the annual contract? A. We have a few, not a great many.

3904 Q. At tariff rates? A. No, at lower rates than the tariff; annual contracts, yes.

Q. That is the inducement to enter into it, isn't it? A. Yes.

Q. And that is the only inducement, isn't it? A. I would not agree to that, no.

Q. What else? A. The shipper has a forward commitment and he wants to engage definite space; he does not wish to gamble on his freight room; he wishes to have it covered and that is perhaps his largest inducement.

Q. I guess we do not understand each other, Mr. Sparks; I do not mean specific cargoes, but I mean a contract which

is such as are in the record here, where there is no 3905
specific quantity mentioned, but you agree to carry all of the shipper's shipments and he agrees to ship all of them by your lines or the conference lines, of course. A. My answer applies perfectly well to him also. He knows that he has a certain amount of business and will have during the year to certain ports and he does not wish to gamble on his freight room, and he does not wish to be shut out and therefore he makes a contract with the lines.

Q. What do you mean by "shut out"? A. If the steamer on the berth is booked full when he comes along there is 3906
no room for him.

Q. How would the contract affect that, Mr. Sparks? A. Because he has already got his accommodation.

Q. No, he has his contract for the year and he enters into that, say the first of January, in the middle of February he has a specific shipment of a thousand tons of freight and he goes on the dock and finds there is nothing there to take it, how does his contract protect him on that? He has not said anything about how much or when or anything he is going to ship, he has entered into a contract to give 3907
you all his shipments, that is not a commitment? A. On the other hand the lines have entered into a contract with him to supply him with space.

Q. Yes. Well, now, what do you mean by that? You mean then, Mr. Sparks—see if I get you: "A" has entered into a contract with you to ship all of his goods by the conference lines, "B" has not; on the 14th of February "B" tenders you a thousand tons of freight and you take it, that is for shipment on the first of March; on the 15th "A" comes along and you are full; you cannot take his 3908
cargo; aren't you; wouldn't that happen regardless of his contract? A. Not necessarily.

Q. Do you mean to say then that a man under contract does not have to declare his shipment or does not have to tender that in advance the same as anyone else does? A. Of course, he does, and we take very good care that he is visited and it is ascertained what cargo he is going to have for a specific sailing.

Q. But you advertise your sailings? A. Yes.

Q. And the shippers generally know when boats are going to leave? A. Yes.

3909 Q. And if they are very anxious to have a shipment go they declare them, don't they? A. Yes.

Q. Without any solicitation? A. They may, yes.

Q. I say if they are very anxious to have their shipments go?

MR. SPOONER: It is not a question of solicitation if you are under contract.

Q. I am talking about freight not under contract? A. You were talking about "A" who was not under contract?

3910 Q. I think my questions are clear enough. You say that you solicit the——

MR. SPOONER: He didn't say that.

MR. KIRLIN: You said that.

Q. I don't mean solicit; you around and enquire from shippers under contract wh they have cargo—when you have a going steamer, it? A. We have men employed for that speci

Q. Exactly. Now, I ou do not by your ad-

3911 vertising in the Jour Commerce and other papers inform the general shipping public when your ships are going so that without the service of these men to inform them they know when your boats are going anyway? A. We do advertise our boats, but that has not been found sufficient, otherwise we would not employ these expensive men.

Q. Why has it not been found sufficient? A. It has not been found sufficient.

Q. I say why? A. I say that is why; it has not been

3912 found sufficient.

Q. In what respect do you mean—your advertisements have some purpose, surely? A. Certainly, but I mean this: that mere advertisement of a boat to sail is not sufficient to insure the getting together of a cargo for that boat in time for her sailing date. The shippers have to be drummed up; the shipping clerks have to be drummed up or you would find your cargo was late and your steamer would not get to sea, and that applies equally to the men who are under contract and those who are not under contract.

Q. But you do, if you know of a large shipper who is not

under contract, you go and remind him that your boat is 3913
going? A. Equally with the one who is under contract.

Q. Then in respect to the service how does the contractor get his advantage at all over the non-contractor? A. He could only have an advantage in times when freight was more plentiful than accommodation.

Q. In that case you would not be going to him so much as he would be coming to you? A. Possibly.

Q. And in that case if "A" who is under contract had not made his declaration as early as "B," who is not under contract, why "A's" stuff would be left on the dock and 3914
"B's" taken regardless of the contract, wouldn't it? A. I don't see why you should suppose that.

Q. I say wouldn't it; I am asking you? A. I don't know, and it would depend on circumstances.

Q. What circumstances? A. It would depend whether "A" had plenty of time to declare his cargo, or perhaps said he hadn't any and then came in the last minute and said I have got some, and then we might not be able to accommodate him. However, these all seem to be very suppositionary cases, because our boats are partly empty and 3915
we have lots of room and when shippers want accommodation they can get it.

Q. In that case the contract is not of any advantage at all in that respect, is it? A. Not at this particular moment. I am talking about this particular time.

Q. I am talking about it generally; how does it work out; under what circumstances would your contract be of benefit to "A"? Don't you, at all events, take the cargo in the order in which it is offered to you for specific shipment? A. I should think generally, yes; generally speaking. It is very difficult—— 3916

Q. I say always? A. No, not always.

Q. When wouldn't you? A. I can conceive of a steamer being pretty well booked up before she comes on the berth, and a lot of shippers coming in to book their freight and our department manager sending around notices to all of the shippers who were under contract that the steamer is getting booked up and space is very short and you had better put in your declaration. I can quite understand that, and I can quite understand then of an adjustment being made between the various "As" and various "Bs"

3917 that some part of each of their shipments should be taken on that steamer.

By Mr. Baldwin:

Q. You mean adjustment between the shippers? A. An adjustment made by our people between the shippers.

Q. You said between "A" and "B"? A. Perhaps you had better read my answer. I don't think I said between the shippers; I think I said as between the shippers.

MR. BALDWIN: All right, then, if that is what you
3918 said.

By Mr. Montgomery:

Q. That will be a question not of what you are under obligations to do, or anything of that kind, but it would be a question of a courtesy extended to a man that you knew had cargo, wouldn't it? A No, no question of courtesy at all If the contract specified that the shipper was to declare within a given time, or a given time from the boat's sailing day what cargo he would have we would
3919 have to carry it, even if we put on another boat, and that has been done a great many times. I don't know about this particular trade, but generally speaking. If, on the other hand, he did not declare until after the date, then it would be a matter of accommodation.

Q. Do you mean to say that if you advertised a boat to go on the first of June and the shipper's contract requires that he declare a shipment two weeks in advance, and in the middle of May he declares cargo for that boat going on the first of June, say a thousand tons, and that
3920 boat is not able to take his cargo that immediately, on the same day, you put on another boat and his thousand tons go whether there is anything else to take or not? A. Not sent on the same day, but we would have to give him accommodation.

Q. Some time? A. Well, about that time, within his contract liabilities, whatever they were.

Q. Does his contract specify within what period after an advertised date your boats will go? A. I don't know whose contract you are talking about.

Q. Any contract? A. They are a little bit different. They vary. Some of the contracts specifically declare the boat.

Q. You are talking about time contracts? A. Yes. 3921

Q. Yearly contracts? A. Yes.

Q. That is what I mean. Can you think of one in which the date is mentioned on which a shipment can go? A. No, I don't know that I can. I think the discussion has rather developed into a general one. I was talking about the general custom out of New York.

Q. I am talking about the Brazilian business of your lines? A. I thought you were rather generalizing.

Q. No, I mean to confine myself entirely to the Brazil business and your contracts in the Brazil business and the 3922 effect of them? A. Eh, huh!

Q. And I do not yet understand you, Mr. Sparks; you will have to be a little patient with me because I do not understand the steamship business very well. But I do not yet understand exactly how it works out that this shipper gets this advantage, the contracting shipper; he does not declare in his contract, does he, the amount of goods that he shall ship by any given steamer? A. No, I think not.

Q. At most it would only be an estimate of what he might have during the year, wouldn't it? A. Yes. Some 3923 of them would specify so much a month.

Q. Some of them for so much a month? A. Yes.

Q. But not so much by a given steamer? A. Yes.

Q. And it has to be declared always? A. Yes.

Q. So much in advance? A. Yes.

Q. He has to give the same notice in advance as the other shipper does, doesn't he? A. Not necessarily.

Q. Why not? A. The other shipper does not have to give any notice, but he takes his chances as to whether the boat is full or not. 3924

Q. See if I understand you. You mean that supposing the contract requirement is two weeks' notice, do you mean that up to the time of that notice you reserve space for the contractor until you see whether he is going to have something or not, and that if another shipper offers his shipment in the meantime he has got to wait until the declaration of the contractor is made, is that it? A. It might work out that way, yes.

Q. You do that sometimes? A. It might work out that way, yes.

Q. And that would result, then, in the cargo of the man

3925 who had not contracted not being carried, wouldn't it? A. It might.

Q. Although he had declared his cargo before the contractor had declared his? A. It is purely suppositionary, but it might work out that way.

Q. Unless it works out that way there is no advantage to the contractor, is there? A. Yes, there is, because we are obliged to carry his shipments. If you give him up to a certain time to declare what he has got to have you are obliged to carry it. That is your obligation under
3926 your contract.

MR. BALDWIN: You mean on some one of the conference lines?

THE WITNESS: Yes.

MR. KIRLIN: But as to non-contractors you carry it if you have the space, otherwise not.

THE WITNESS: That is right.

Q. I think you said—I have forgotten whether it is in the record or not—that there was a new tariff being pub-
3927 lished some time ago, I think when you first testified; is that published yet? A. Yes.

Q. Can you give us a copy of it? A. I will be very glad to.

Q. Now, in regard to this parity with the European rates, I think you said that your rates were based on the European rates? A. That is correct.

Q. That is your tariff rates? A. That is correct.

Q. But at various times you depart from your tariff rate? A. Yes, we do occasionally.

Q. And by European rates you mean the rates charged
3928 by the lines running from European ports to Brazil? A. Yes.

Q. And composing the conference over there? A. I have no knowledge of that. I think so; I have already testified.

Q. To the uniform tariff for all the lines running from Europe to Brazil? A. Yes.

Q. Regular lines? A. Yes.

Q. And this Exhibit 158 is the European tariff, isn't it? A. I am not familar with it, Mr. Montgomery.

Q. I think Mr. Gottheil left it here? A. I don't have any occasion to consult it, but I have no doubt it is correct.

Q. When you depart from those rates you are obliged 3929
to get the consent of your principals abroad, aren't you? A. Yes.

Q. Now, do you know whether your principals have to get the consent of this European conference or not? A. I have no means of knowing.

MR. KIRLIN: Consent to it?

Q. To carrying goods at lower than the tariff rate from the United States to Brazil by the conference lines or any of them? A. Perhaps I had better explain that, Mr. 3930
Montgomery. We do not as a rule ask our principals. We as a conference ask London, which is presumably asking the conference there. That is, the New York conference. What they do as between themselves and the European conference I have no knowledge.

MR. BALDWIN: Do you mean the London conference?

THE WITNESS: Simply the secretary of the New York conference is located in London for convenience sake. 3931

MR. BALDWIN: They have a London conference too, don't they?

THE WITNESS: That I don't know. Mr. Crim asked me a couple of hundred questions on that and I was not able to answer.

Q. Do you know whether or not the European conference departs from the tariff rates in the same way that you do? A. I don't know anything about it.

Q. They never ask you or consult with you? About the 3932
lowering of the rates from Europe? A. No. The principal does not usually ask his agent for permission to do something.

Q. So that the practical effect is that the rates from the United States to Brazil are made without consultation with you or your firm, Funch, Edye & Company? A. Would you mind reading that question?

Q. (Question read.) A. I should answer that in the affirmative except that our recommendations are given full consideration by our principals.

Q. And by the European conference? A. I don't know anything about the European conference.

3933 Q. If I understand it, the basis of your rates is the European tariff to Brazil, the tariff—— A. The tariff of the European conference to Brazil.

Q. Now, then, unless you have some influence with that conference, or unless you are consulted about the making of the rates from Europe to Brazil, doesn't it result that they are made without your judgment, and that then you are told that your rates are the same, and isn't it in effect the making of your rates by the European conference? A. Yes, with the exception of the fact that our recom-
3934 mendations for changes are given full consideration.

Q. You never recommend changing the European tariff, do you? A. We recommend changing the rates here.

Q. Do you know whether the European rates are changed when you recommend them? A. I don't know.

MR. KIRLIN: He did not say he recommended change of European rates.

Q. You do not, do you, recommend change of European rates? A. No.

3935 Q. Do you ever recall having been consulted about any change in the European rates at all, and how it would affect the American rate? A. I do not think they have ever asked us a question about it.

Q. Do you always know exactly what the going rate is from Europe? A. No, I don't think we do. We frequently cable to ask what the European rate is.

Q. That is, that the rate may have been changed and you are not notified of it? A. Yes; that is quite possible on some commodities.

Q. In other words, they do not make it a practice to
3936 promptly notify you of the changes in rates? A. I think they do very fairly promptly.

Q. Why do you have to cable them? A. Ocassionally we get information from a shipper that he thinks there is a lower rate in effect from Europe, and then we either cable or write to find out what the situation is, and in almost every case we find that there is no basis whatever for the shipper's complaint.

Q. But sometimes I take it from your answer you sometimes do find there is a difference? A. We had a case recently when we asked about the cement rate and we were told a reduction had been made.

Q. And you were not notified of it? A. Not immediately. 3937

Q. And that has happened at other times, hasn't it? A. I do not recall any other case. I don't think there has been any other case.

Q. Do you recall the cement enquiry of Hasenclever a year or two ago? A. No, I do not recall it.

Q. You do not remember that? A. No.

Q. These ships that run from Europe to Brazil, do you know anything about what kind of ships they are? A. No, I do not know anything about the European service.

Q. You do not know as a matter of general knowledge 3938 that they are running passenger ships? A. I know they have quite a great many vessels.

Q. Passenger ships? A. Presumably freight and passenger.

Q. Most of the ships carry passengers, don't they? A. I think they do.

Q. Whereas most of the Brazil ships from here, ships running from here to Brazil, are mainly freight boats? A. That is correct.

Q. It is more expensive to run a passenger boat, isn't it? 3939 A. I don't know anything about passenger boats, but I think I could say it is more expensive.

Q. It is a better service, isn't it? A. It is an entirely different trade. Of course, I have traveled on lots of passenger steamers and I know they are much better steamers and much more expensive.

Q. To operate? A. Certainly.

Q. And they make quicker time as a rule? A. It is too general, Mr. Montgomery. I am quite sure that there are freight steamers that steam faster than passenger ships.

Q. Take it in your trade, don't the Lamport & Holt 3940 steamers make faster time than other steamers in it? A. Yes, they have the faster boats; we are now getting boats as fast as the Lamport & Holt steamers.

Q. They have been the very fastest boats in the service? A. Yes.

Q. And that is because they carry passengers? A. That is the type of boat.

Q. That is because they carry passengers? A. Not necessarily. We have other boats that steam as fast as the Lamport & Holt boats.

3941 Q. But that is unusual, isn't it? A. It is too general. I do not know why it should be unusual.

Q. I don't know why it is, but how many boats are there in this service that are as fast as the Lamport & Holt passenger steamers? A. You people suppose they are fast only because they are passenger steamers. I don't think that is necessarily true.

Q. At any rate they move more promptly than the other steamers? A. They do, yes.

Q. And come closer to making their advertised dates?
3942 A. No closer than we do at the present time. We sail on our advertised dates.

Q. As a rule through the period you have been connected with Funch, Edye & Company the Lamport & Holt steamers have a great deal more closely approximated their advertised dates of sailing than anybody else? A. Yes.

Q. You don't know of any case where one of their boats has lain 40 or 50 days in Brazil, passenger boats? A. No. I don't know it; I should think it was very improbable.

Q. When you say that the European tariff upon which
3943 you base your rates is the tariff adopted by your conference here, you mean that is the tariff charged by your lines, the German lines, isn't it? A. I did not transpose the European tariff into American currency personally, but I think they took the English tariff and the German tariff and they made the American tariff from the two.

Q. It was made from this book, wasn't it, Exhibit 158? A. I do not recognize Exhibit 158.

Q. The rates on tariff articles are made in the United Kingdom and Dutch and German ports, aren't they? A.
3944 I believe so.

Q. And the rates made by that European conference are the rates which your line charges, aren't they? A. Yes.

Q. And the rates that the Lamport & Holt Line charge on their passenger steamers are ten per cent. above that, aren't they? A. They may be. I don't know whether their lines are——

Q. What do you mean by that—"Maybe"? A. They sometimes charge ten per cent. more, but I do not know whether they do it always.

Q. Then doesn't it come down to this, Mr. Sparks, that the European-Brazil service is, generally speaking, a pas-

senger and freight service; that is, that freight is carried 3945
on the passenger boats; that in the service from New York to Brazil boats that carry freight only, charge the same rate that the European conference charges on the passenger boats, and that your only line of passenger boats carrying freight charges ten per cent. more than the European rate? A. Yes. I don't know how often they charge it.

Q. But when they do? A. When they do that would be a fact, yes.

Q. Under these agreements they have the right to as 3946
far as your conference is concerned? A. Yes.

Q. And you know that very often they have? A. I do not know about it. I believe they do most of the time, but they have the right to do it; whether they do or not is their own affair.

Q. Now, Mr. Sparks, under this pooling agreement, as I understand it, your line was required to carry or else to tender space for its proportionate share of the cargo moving; that was true, wasn't it? A. Yes.

Q. Is there such an obligation now on the part of the 3947
lines? A. No.

Q. Under this pooling agreement, Mr. Sparks, on page 26 of the Petition, I find the expression "advalorem cargo"; what does that mean? A. I testified to that I remember once before that it is freight, valuable freight, on which the carrying or transportation charge is assessed on its valuation instead of on its weight or measurement.

Q. What class of goods do you carry on that basis? A. I do not know that we carry anything, but I suppose there may be some provision in the tariff that if the cargo is valued above a certain price per cubic foot or cubic ton, 3948
or whatever it is, it then becomes an ad valorem case.

Q. Who would know about that? A. Mr. Betts. Specie and stuff of that kind.

Q. Could one of you give us a list, if there are such articles? I don't care who produces it, of the articles carried on at the ad valorem basis, or by the ad valorem charge made? A. Yes; we will have a list made up for you.

Q. Do you recall, Mr. Sparks, the question arising as to whether a contract signed by all three lines was legal? A.

3949 I had forgotten the incident, if I ever knew about it, but I have seen it in the record of these proceedings.

Q. You do not recall any conversation about that? A. No, I do not recollect it very well.

Q. Does what you have read of the record refresh your recollection so that you do recall that the question arose? A. I remember this, Mr. Montgomery: That at one time there was a great deal of trouble made by one of the agents here about the signing of contracts. It did not seem to matter what form the other agents wanted to sign them
3950 in, that agent objected; and I think I do recall——

Q. Was that by any chance the agent for the Lamport & Holt Line? A. It was the agent for the Lamport & Holt Line, and I think I do recall that that was one of the arguments used when we wanted three signature contracts.

Q. Do you recall in what respect it was said that they were illegal?

MR. KIRLIN: We object to that; it is immaterial and surely it cannot be competent and material what
3951 counsel may have thought about it.

MR. MONTGOMERY: I think the question of intent has been held to be of some importance.

A. Do you want me to answer?

Q. Yes? A. Will you repeat the question?

(Question read.)

A. No, I do not recall; but as a matter of fact I think the rest of us thought it was merely a subterfuge, and we
3952 rather doubted whether he had any such legal advice.

Q. All he said is that it is illegal? A. Yes; I do not recollect the circumstances well enough to reproduce his argument.

Q. That was Mr. Daniels, was it? A. Yes.

Q. But didn't you ask him in what respect, or wasn't there any discussion about it? A. I dare say there was, but I have forgotten.

Q. Mr. Daniels, was the man you had in mind, wasn't it? A. Yes.

MR. SPOONER: He answered that.

Q. Cannot you recall, or do you know now, in what re- 3953
spect it was said to have been illegal?

MR. KIRLIN: This is all subject to our objection and so understood?

MR. MONTGOMERY: Exactly.

A. I suppose that it was the doubt in his mind, or an attempt to create a doubt in our mind as to whether a contract by a combination of lines was a legal contract or not.

MR. SPOONER: He wants you to say whether it was in violation of the Anti-Trust Law. 3954

A. I don't think we were as familiar with that in those days, but I suppose that is what he was driving at.

Q. And is that what you understood? A. I suppose so. I do not think we knew very much about the act in those days.

MR. SPOONER: Do you pretend to now?

THE WITNESS: Not a great deal. I am more familiar with it perhaps. 3955

Q. There was a conference, Mr. Sparks, in 1906, of some of the lines engaged in trade between here and Brazil?

MR. KIRLIN: This is subject to our objection previously stated to all transactions prior to the time stated in the petition.

A. I am not in position to give you any information about what happened in 1906.

Q. In 1907 there was an agreement in effect, wasn't there, between the German Lines and some of the lines 3956
engaged in the trade?

MR. SPOONER: Same objection.

A. I had nothing to do with the trade in that year.

Q. You were one of the members of Funch, Edye & Company during that year? A. Yes.

Q. And you knew in a general way that your lines were co-operating with other lines, didn't you? A. I don't think they were co-operating with anybody when I joined the firm. My recollection is that there was a fight on that time.

3957 Q. When you joined the firm? A. Yes.

Q. When did you join the firm? A. The first of June, 1907.

Q. I want to refresh your recollection, and I know you want to be fair; I show you this book marked "Rate Agreements, March, 1907, to January, 1909," and ask you if it does not contain minutes, or ask you if by looking at this——

MR. SPOONER: What is the date of that?

MR. MONTGOMERY: It runs from March, 1907, to
3958 February, 1909.

Q. I ask you if by looking at that book you cannot determine whether or not your lines were in agreement in June, 1907, with other lines operating in the Brazil trade? A. They evidently were. This only proves how valueless my recollection of what happened in 1907 was.

Q. What lines were those at that time? A. I don't know. I testified, Mr. Montgomery, that I don't know anything about the Brazil trade prior to the end of 1908.

3559 Q. I understand, but what I wanted to get at, Mr. Sparks, when you went into Funch, Edye & Company, were they representing then the Hamburg Line and the Hamburg-South American Line or was it the predecessors of those lines that they were representing? A. I imagine it must have been the predecessors, but I don't know. I don't know just what month the change took place.

Q. The Hamburg-South American Line bought the Union Line, didn't it? A. I believe so, yes.

Q. And the Union Line had been a member of the con-
3960 ference with the Prince and Lamport & Holt, hadn't it? A. I don't know, Mr. Montgomery. I daresay it is correct. I have no doubt it is, but I don't know.

By Mr. Baldwin:

Q. Mr. Sparks, I want to ask a question. You have testified that among the other advantages to a shipper who makes a time contract is that your lines practically guaranteed him space, whatever his shipment or offer, is that right? A. Perfectly correct until the last few words. I never testified that we would take it whenever they would offer it.

Q. Then as an inducement for him to make a time con- 3961
tract, that is to say, an additional inducement over the reduction in rates, do I understand that in a former answer you did not mean that your lines guaranteed him space providing he gave you notice within the time of his agreement? A. That is what I said we did do.

Q. Then, providing that he should notify you in time within the 20 days, or the time mentioned in his agreement, you guaranteed him space for the next sailing, provided he notified you within that time? A. Unquestionably.

Q. Now, assuming he gave you notice of the time at 3962
which he wished to ship, and at that time there was cargo from shippers who were not under contract, either sufficient to fill the boat or sufficient so that all the shipments that the contractor had notified you about could not be taken aboard that ship, so that he would not have full space for his cargo, under those circumstances what would you do? A. You begin by saying there was plenty of room and finish up supposing that——

Q. I didn't say anything of the kind; no assumption there was plenty of room. (Question read.) A. I have 3963
already testified to that, Mr. Baldwin.

Q. I don't care what you have already testified to? A. I shall be very glad to testify again: That perhaps, or that our manager or department manager before he filled up the boat with the shipper's cargo who was not under contract would have given notice to the man who was under contract so that he could make his declaration.

Q. I don't think that quite answers my question. That is to say, if you had from non-contractors sufficient cargo to practically fill the ship you would then——

MR. KIRLIN: Offered? 3964

Q. Offered, of course, I am assuming that. Then you would find out from all of the people with whom you had time contracts what they expected to send on that ship, is that right? A. That is quite right. That would naturally be correct, and that would be done.

Q. Now, after the general shippers not under contract had notified you what they wanted to go on that ship, tendered it to you, if you then should find that those under contract would have commitments for that boat, or merchandise rather for that boat, sufficient to either fill the

3965 boat or the most part of it, then what would you do with the general shipper? A. If we had accepted the general shippers' freight which was offered to us and such a condition arose we should have to put on another boat.

Q. If you had not accepted it, but they had tendered it then what would you do? A. We would take the cargo of the man under contract and tell the other shipper he could not have space on that steamer.

Q. What proportion of your shippers make time contracts? A. I have no idea.

3966 Q. The number of people making time contracts, we will say for a given number of months for a year, are comparatively few, are they not?

MR. KIRLIN: Are you speaking of contracts or the volume of goods carried?

Q. No, the number of people? A. I don't believe I am competent to answer that, Mr. Baldwin.

Q. You have enough general knowledge to know that the number of people that you make time contracts with compared to the number of people that you do not is pretty

3967 small? A. Yes, I should think so. That is general knowledge.

Q. Are most of your time contracts made with large shippers right here in New York? A. Yes, that would be the object of making a time contract on both sides.

Q. Do you get many of your regular shipments, that is to say, your trip shipments, from people here in New York or from out of New York? A. Principally in New York.

Q. They are persons, aren't they, mostly who make commitments or attempt to make commitments on your boats

3968 for shippers residing inland or elsewhere in the United States? A. No, I think they are principally commission houses here in New York.

Q. You don't mean to say there are not a great number of shippers in the United States who send here to go on these boats? A. Yes, many of them are, but the principal ones, I believe they are the commission houses in New York.

Q. There is evidence in this case already, I think it is in the testimony of one of your firm, that there are about 600 customers; is that about right? A. I have no idea.

Q. Mr. Gerhard, I think testified there was about 600 cus-

tomers? A. He probably means he has about 600 shippers 3969
on his mailing list. I don't know what our mailing list is; Mr. Betts would know all about that.

Q. How many times since 1908 have you been required under conditions that I have stated as an assumption to charter outside vessels so as to accommodate your time contracts? A. I do not recall any occasion. I believe we had to do so once, or maybe twice in the case of some rail commitments we had.

Q. Then in actual practice it turns out to be that you have always had sufficient space both for the time contracts, 3970
and those who were not under contract? A. Yes, very frequently more space than enough, the object of the lines being to have more space than there is calls for.

Q. I suppose that is pretty generally known among the shippers, is it not, that your policy is to have a surplus of space? A. I don't know why.

Q. I didn't ask you why or not; I am asking you the facts; is it or is it not? A. I should think not.

Q. Not generally known? A. I think not. At any rate they can never tell when it will happen.

Q. If you always had surplus space then this advantage 3971
which you speak of to the contractor where he will always be assured of space is not of any real advantage anyhow? A. I did not say we would always have space.

Q. What did you say? A. I said we frequently have more space than enough and it is of no value to the shipper——

Q. Did you not just now say that it was part of the policy of these lines to have more space all the time? A. Yes, always to keep plenty of room on the berth. But that does not mean there will be space in the boats on the 10th 3972
of June, and if the shipper has a contract in March to ship on the 10th of June he is not going to trust to luck that we have more space on that particular boat.

Q. But it frequently happens that the conference lines will have more than one boat on the berth, won't they? A. Yes.

MR. SPOONER: Reserves the right to cross-examine the witness at the next hearing.

Hearing adjourned to Thursday, June 12th, 1913, at two o'clock P. M.

3973 NEW YORK, June 12th, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER; by Charles Burlingham, Esq., and Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*

MESSRS. SPOONER & COTTON; by J. C. Spooner,
3974 Esq., for Paul Gottheil, *et al.*

MESSRS. CONVERS & KIRLIN; by J. Parker Kirlin, Esq., M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

THOMAS A. SPARKS, recalled.

DIRECT EXAMINATION continued by Mr. Montgomery:

Q. Mr. Sparks, you testified yesterday that ships going from Europe to Brazil usually get return cargo, do you remember that? A. Yes.

3975 Q. What had you in mind; what kind of cargo do they get? A. Well, if they don't get coffee from Brazil they get freight from the River Plate.

Q. That is, they go down to the River Plate and get it? A. Yes.

Q. They don't get anything from Brazil that the lines from here do not get? A. I don't know what the volume is from Brazil to Europe.

Q. You don't know of anything that is exported from Brazil to Europe that is not exported from Brazil to here?

3976 A. I don't know anything about that.

Q. You haven't anything of that kind in mind? A. No.

Q. You were asked to produce the recently published tariff of rates; have you that? A. Here it is (producing).

MR. MONTGOMERY: I ask to have it marked for identification.

Marked Petitioner's Exhibit 231 for identification.

Q. You were also asked to give a list of the articles upon which an *ad valorem* charge was made; have you done that? A. Page 61 of Exhibit 231 for identification gives

you the *ad valorem* rates that are printed in the tariff; and 3977
one of the headings there is "Merchandise not otherwise specified." In order to clarify that for you I have had a list of the cargo that might usually come under those headings added on page 61.

Q. Will you state what rate these articles bear; what rate of value they pay? A. Presumably 1¼%.

Q. 1¼% of the value, is that it? A. Yes; in lieu of other freight charge.

Q. All of those articles enumerated there on page 61? A. Yes. Bahia, 1¾%, Rio de Janeiro and Santos 1¼%. 3978

Q. Is this tariff, Exhibit 231 for identification, now in force? A. Yes.

Q. When did it go into effect? A. I think the first of January.

Q. Have there been any changes made in it since it went into effect? A. If so they are shown on the tariff.

Q. That is, they appear in this copy of the tariff? A. Alterations have been made there, yes.

Q. Have there been any general changes in rates on any classs of cargo recently by the conference lines? A. 3979
There are changes and modifications all the time; I haven't anything special in mind at the moment.

Q. Wasn't there a general reduction on certain classes of commodities in rates recently? A. Not that I recall.

Q. A reduction of so much per ton? A. Not that I recall.

Q. You do not recall any reduction of 60c. a ton on a number of articles recently, dead weight cargo, made by the conference lines recently? A. Yes, I think there was some such reduction.

Q. On what class of goods? A. On cement and some 3980
classes of steel, I think, to conform to the change in the European tariff.

Q. Do you remember the amount of it? A. I think about 60c.

Q. 60c. per ton? A. Yes.

Q. Do you remember when it went into effect? A. No; I can look it up for you.

Q. A recent change? A. Yes.

Q. Do you know when the European change was made? A. I only know about cement. The change was made here, I think about the 6th of May. I think we got a cable on

3981 the 5th of May and it went into effect on the 1st of May in Europe, so far as my memory serves me.

Q. And that was the instance that you learned of from some shipper who knew the European rate first, wasn't it? A. Yes. We cabled to find out whether there had been any change.

MR. MONTGOMERY: I offer Exhibit 231 for identification in evidence.

Received as Petitioner's Exhibit 231.

THE WITNESS: Let me see that. I don't know
3982 whether they made the alterations in this tariff or not. I mean, taking this cement, for instance, I don't see that that is changed up to date. It is just possible they have given me a copy that has not been altered, one out of the reserve supply that has not been altered. If that is so I had better get it altered for you, hadn't I?

MR. MONTGOMERY: I don't think that is worth while.

3983 CROSS-EXAMINATION by Mr. Spooner:

Q. Mr. Sparks, you were asked and testified as to the proportion of ships, conference ships, which carried passengers contradistinguished from those which carried freight alone, and you stated as I recollect it that a very much larger number of them carried passengers as well as freight? A. You mean from Europe?

Q. No, from here to Brazil? A. No, I think not, Senator. It was European ships.

Q. You say that the proportion of those which carried
3984 passengers was about one to three? A. About one in three; the others are purely freight boats.

Q. I want to ask a question or two about the call at New Orleans. When did the boats of the Hamburg-American and Hamburg-South American Company begin to call at New Orleans? A. Some time during the spring or summer of 1907.

Q. What were the circumstances—what was the condition between the lines; there was no conference then; what was the condition, was it fiercely competitive? A. Yes. I think that call at New Orleans on the northbound trip was a retaliatory measure against the other lines in the trade.

Q. What other lines? A. The Lamport & Holt and 3985
Prince Line.

Q. Prior to that the Hamburg Company's ships had not been in the habit of calling at New Orleans? A. No, I believe not.

Q. When did they stop calling at New Orleans? A. As soon as an agreement was reached between the lines.

Q. Did the other lines, the Lamport and Prince Line, continue to call at New Orleans? A. Yes, sir.

Q. And have ever since? A. To the best of my belief, yes. 3986

Q. What freight did ships from Brazil carry for New Orleans? A. I think only coffee.

Q. Was there business in three lines in coffee sailing from Brazilian ports to New Orleans?

MR. BALDWIN: I object as a pure conclusion. I think we ought to have the data.

A. I have no data on that, but judging from the New York service the New York cargo, which is not anything like enough for three lines, I should say New Orleans fur- 3987
nished even less cargo.

Q. You testified that there was some delay in loading ships with return cargo at Brazilian ports, at Rio for instance—— A. Santos principally.

Q. Is that true? A. Yes, sir.

Q. Have you any data on that subject? A. Yes, I have brought the figures of all the boats that have loaded since 1907. These figures show that——

MR. BALDWIN: Wait a moment, don't state what they show. If they are offered in evidence I want 3988
an opportunity to examine them.

Q. Did you make that memorandum yourself? A. No, I got it from the Hamburg-American Line.

Q. Can you by using that statement testify to the facts?

MR. BALDWIN: I object to his testifying from any memorandum made up by somebody else. It would not be primary evidence and it would be hearsay upon his part merely, and I ought to have an opportunity, if there is a table of statistics made up, to examine into it and see whether or not I would

3989 have any objection as to its competency. I am speaking blind on the matter. The witness has already shown it is not his handwork and it is hearsay evidence.

THE WITNESS: Is the witness allowed to talk without having it go down on the record?

MR. BALDWIN: The Senator wants me to look it over and I have no doubt about its correctness.

MR SPOONER: You may look it over.

MR. BALDWIN: (After examination of table.) So
3990 far as the tabulation itself is concerned, subject to verification, we do not object to it on the ground of its competency.

Q. You may testify from that, if you choose, Mr. Sparks. You may testify to it, to the facts; read it? A. You don't want me to read it all through?

Q. No, use that as a basis? A. This statement says that the maximum number of days taken by any one steamer to get her cargo of coffee was 43¼ days; num-
3991 bers of steamers took over 20 days and when we consider that all of them got part cargoes it would be found that on an average steamers had to stay in port one day for every 2,000 or 2,500 bags of coffee which they secured.

Q. How many ships does that record or memorandum show came up with full cargo during the time covered by the statement? A. This statement does not show whether it is full cargo or not, inasmuch as it does not show any vacant space up, and I testified yesterday from a statement I was shown here which proved that no steamer had a full cargo. In the five or six years which
3992 were under discussion no steamer had a full cargo.

Q. What difference is there between them in respect of the ability of an owner of a ship to tolerate that delay in loading and the tramp ships?

MR. BALDWIN: I object as asking for a conclusion and not material.

A. The liner has to get back to a given point and, therefore, has to put up with conditions that the tramp would not, inasmuch as the tramp could go anywhere in the world where the business pays him best.

Q. Is it true or not that the owner can stand the daily

expense of such a prolonged period of loading whereas a tramp could not? 3993

MR. BALDWIN: I object as calling for a conclusion and a comparison based upon no data whatever which has been offered.

Q. Answer.

MR. BALDWIN: He has not shown himself qualified to testify to that.

A. I don't think I can answer that question. 3994

MR. SPOONER: I offer the statement in evidence. Marked Defendants' Exhibit 7.

Q. State if you know, Mr. Sparks, what advantages accrue to the public, if any, from this conference arrangement?

MR. BALDWIN: I object to that; he has not shown himself in any way qualified to state the advantages to the public; that is a question for the Court to infer. 3995

Q. How long have you been engaged in the shipping business? A. I began in the steamship business, my earliest days in the business, in 1895 I think.

Q. In this country? A. No, in London, and with the exception of a few years, when I was agent here in New York for a China and Japan mercantile house agency, and afterwards started a line of steamers. I have been in the steamship business ever since.

Q. And in the mercantile business too? A. Yes. 3996

MR. BALDWIN: I object on the ground that it is immaterial, irrelevant and incompetent, and that he has not shown himself qualified to state the advantages to the public generally; that that question is a matter for the determination of the Court and does not depend upon the opinion evidence of anybody, but is based upon the facts affecting the public and a mere conclusion of this witness is certainly not either competent or material; and also further it is not pertinent to any question I asked upon the direct.

3997 Q. What firm did you work for in London? A. Galbraith, Pembroke & Company of London; they are ship owners and ship brokers.

Q. You may answer the question Mr. Sparks?

MR. BALDWIN: My objection comes in as to this, of course?

MR. SPOONER: Yes, certainly.

(The stenographer reads the previous question as follows: "State, if you know, Mr. Sparks, what advantages accrue to the public, if any, from this
3998 conference arrangement"?)

A. The first and greatest advantage is the frequency and regularity of sailings, which gives the merchant the opportunity of forwarding his goods at frequent and regular intervals; the second in importance is the stability of rates which also gives him a distinct advantage in being able to make forward contracts; the third is the supply of a higher class of boat than would otherwise be available, and that gives him an advantage in getting the most favor-
3999 able insurance rates. I think perhaps those are the three I can think of off hand, Senator.

MR. MONTGOMERY: Do you mean insurance on the boat or insurance on the cargo?

THE WITNESS: Insurance on the cargo.

Q. Anything else, Mr. Sparks? A. It enables the lines to supply better terminal facilities, which means that the shipper can send his goods down to the wharf when they are ready and get the bill of lading, saving him in that way
4000 interest charges and storage. There are a number of others which, perhaps, I might think of as I went along.

Q. Go ahead? A. I think perhaps that is all for the present.

Q. What are the inevitable results which follow from an attempt to carry on such a business without some agreement or understanding among the several lines?

MR. BALDWIN: Same objection, and that he is not qualified.

A. The alternative to the conference system is a period of unrestricted and ruinous competition. That always re-

sults in deterioration of service; it results in the weaker 4001
lines withdrawing their sailings as much as possible in order to limit their loss, and would eventually throw each trade into the hands of the one strongest line. Furthermore it means constant fluctuations of rate, which is very much to the disadvantage of the merchant inasmuch as he may get a reduced rate to-day and for the same ship his competitor may get a still more reduced rate to-morrow. It means chaos for the steamship line and chaos for the merchant and is undesirable from the point of view of both. I should like to add, Senator, to my former answer that the 4002
privilege, the advantage and privilege given to the merchant to make joint contracts with the conference lines is amongst the very great advantages.

Q. That is what you call the interchangeable contracts? A. Interchangeable contracts. For this reason, that sort of trade——

Q. Explain that so that the record will show just what you mean by it, the practical operation.

MR. BALDWIN: This, of course, is all subject to my objection? 4003

MR. SPOONER: Certainly.

A. The export trade from America, although assuming large proportions, is more or less in its infancy. The volume is not nearly as great as from the oldest European countries, and the result is that there are not nearly so many despatches, especially in long voyage trades from America as there are from Germany or England. The merchant in the foreign ports sending his orders, sends one copy to London, one to Berlin; one to New York and perhaps other places; his great desideratum is to get quick, 4004
frequent deliveries at his port; he wants to avoid being overdrawn at the bank, he wants to avoid interest charges, he wants to avoid storage charges and insurance charges and if he can get his goods delivered to him every week, or every three days, the more frequent and the smaller the deliveries the better he is suited. From Europe to a number of countries—I believe Brazil—there are departures every day; from America we have departures perhaps every week. If the lines can give the shipper the benefit of services over any line leaving New York, for the

4005 sake of argument to Brazil, you double or treble the number of boats by which his correspondent in this country can make him shipment; whereas, if he only uses one line, making a contract with one line, he would only be able to make monthly, or perhaps, fortnightly shipments. In that way the shipper from here, and the manufacturer here, would be at an immense disadvantage as compared with the shipper and manufacturer in Europe.

Q. How are you by reason of such arrangement able to better improve your boats; that is, furnish a better serv-
4006 ice and better boats and all that? A. If an owner has definite commitments in the trade and knows that he will be required to furnish services week in and week out, month in and month out, he can afford to build boats especially intended for this trade; whereas, if he had no certain tenure upon the business that he has built up, he would be content to keep the oldest and the worst of his boats in the business, and they would be changed from time to time and be nothing more or less than tramps.

Q. What effect does such an arrangement have upon the
4007 rates in respect to reasonableness or unreasonableness?

MR. BALDWIN: Same objection to all this.

A. What is that?

Q. What effect does the conference understanding of various lines have upon the reasonableness or the unreasonableness of rates—with respect to whether they are reasonable or unreasonable? A. There is no opportunity among the regular lines to raise their rates unreasonably. The moment they do so they create competition for the
4008 business. Either the merchants singly or in combination will put on steamers of their own, or, if the rates are above the price at which tramps can be chartered, loading brokers can always be found to take the merchants' contracts, amalgamate them and put on a service.

Q. Can you say anything in respect to the comparison of rates up to 1907 and since the formation of the conference?

MR. BALDWIN: Same objection.

Q. In respect of reasonableness or unreasonableness? A. I would not be competent to speak of rates before 1907, in fact, before 1908; I don't know what they were.

Q. Does it or does it not involve better service to the smaller ports than would otherwise be the case? 4009

MR. BALDWIN: He has not shown any knowledge here on his part to answer a question as to the condition in Brazil and smaller ports; I make that as an addition to my general objection I have heretofore urged.

A. A pooling agreement undoubtedly serves the purpose of making a better service to-day at the ports because the ship owners will not go to a port for a small amount of 4010 cargo, when the call will cost him more than the gross freight which he earns; but if he is working as one unit of a general whole in the building up of the trade, then seeing that you were sharing the freight to the larger ports with the boats that serve those ports he is willing to send his boat in at extra expense to the out port.

Q. I will ask you whether from you experience in business the rates since 1908 have or have not been reasonable? A. I am quite sure they have been reasonable.

MR. BALDWIN: My objection is to all this, of 4011 course.

By Mr. Kirlin:

Q. Mr. Sparks, you were asked yesterday a question whether on the charter of the tramp steamer for a voyage from here to Brazil the owner would not ask in substance a sufficiently enhanced rate to enable him to make a ballast voyage which will probably be necessary for the shipper to make from Brazil either to the Plate or back to the Gulf to get another cargo, and you said that that undoubtedly would 4012 be a circumstance affecting the rate; is there anything peculiar in the Brazilian trade in regard to that? A. Not at all; that same condition would obtain wherever the owner was going. If he could not get a return freight from his port of discharge it would undoubtedly add to the cost of his voyage and he would increase his rate accordingly.

Q. Isn't it a fact, Mr. Sparks, that there are relatively few places to which tramp steamers can be chartered for a voyage from which there is cargo worth while to bring back without making another step from the place of discharge to get cargo or vice-versa?

1003

4013 MR. BALDWIN: I object to that in addition to my general objection, which I understand goes to all of these questions; as to the generality of it.

A. I can particularize perhaps. It is comparatively rarely that the owner of a tramp steamer gets his return cargo from the very port at which he discharged his outward cargo. I can give you an illustration of that in a few words.

MR. BALDWIN: I object to the illustration.

4014 MR. SPOONER: It is in the testimony on your question that this firm chartered 500 ships per year.

MR. BALDWIN: That's all right, I am making my objection.

THE WITNESS: I can give you an illustration in a few words.

Q. Do it? A. An owner sits in London, or Stockholm, or Hamburg, wherever he may be; he is bombarded by quotations of freight by brokers. One comes in and says he
4015 has a freight from Cardiff to Aden, and the owner asks what shall I do after I get to Aden. Well, the broker says——

MR. BALDWIN: In addition to this I want to put another, that he is stating a possible assumption under which owners may operate tramp steamers.

A. (Continuing.) The broker says the steamer will be just in time for the Java sugar market, or the Rangoon rice market, or freight from Calcutta, or that he can come back through the canals of the Black Sea where freights
4016 are good. The owner goes into a calculation and he finds those various voyages will occupy perhaps a 100 days; he finds what the cost will be—he knows what the cost of his steamer is to him—he says the boat cost £20 a day and that will show him a return of £22 a day. There is another broker comes in and says he has a freight to Rio; the owner says what will I get after I get to Rio? Well, the rates from the Plate are so and so, the rates from the Gulf—you will be just in time for the cotton season, or so and so—he makes a calculation on the Plate and shifting to the Gulf for cotton, he finds the cost is £18 a day and the return £23 a day, and he gives up the idea of the Aden-Calcutta

voyage, and thinks about South America. The owner per- 4017
haps makes a counter offer to the broker at a little higher rate, and he finally is fixed to go to Rio. Having in mind his calculations for cotton from the Gulf ports home to Europe between the time he fixes his steamer, and the time that he is ready to fix her again from South America, there may have been a kaleidoscopic change in the freight; cotton freights from the Gulf may have gone to pieces, rates at the River Plate may be better or rates from the far east may have suddenly grown very good. It is quite possible that the owner gives up his cotton freight, gives up his 4018
Plate freight and perhaps shifts in ballast to Cape Town, where he will give his steamer fresh orders there, he may take a cargo to India, or he may go across to Australia and take wheat freight home. The tramp is absolutely uncontrolled by anything except the law of supply and demand. He goes where the business is best. He is not to be relied upon at all to move any regular flow of freight.

Q. So that if a vessel is offered to him in—a charter is offered to him in the New York market for Rio the considerations that lead him to take or refuse that charter 4019
are not alone the New York market, but the market in London, Hamburg and the other great freight markets of the world.

MR. BALDWIN: Same objection.

A. It is entirely a world question. He does not care for one market any more than he does for the other, simply what the boat will show the best return on.

Q. That is, he is not limited by what he can get in the New York market? A. Not at all. 4020

Q. I gather from your answer, Mr. Sparks, that in considering whether an owner would take a charter that was offered him from New York to Brazil he would not expect to get for that run down a price adequate to bring the boat back here in ballast the whole way.

MR. BALDWIN: Same objection, immaterial and irrelevant and incompetent.

A. Certainly not; he would take a gambler's chance—that is what he is—as to what he could get to come back. He certainly would not try to add the whole cost of the

4021 voyage back, because there would be other tramp owners who would outbid him and, therefore, no freight for the ship.

Q. If he tried to get the cost of the round voyage for his single cargo down the practical aspect of the matter would be he wouldn't get any business? A. He wouldn't get any business; his ship would stay tied to the post.

MR. SPOONER: Suppose he could get a cargo of coffee which would take forty days to load, how would he treat it?

4022 THE WITNESS: He wouldn't take it.

MR. SPOONER: Why?

THE WITNESS: He couldn't afford to. He could get better business elsewhere.

MR. BALDWIN: This is all, of course, subject to my objection. How he can state what a tramp owner would do under a given circumstance is beyond me.

Q. You said that your tariffs were based upon tariffs from England and the Continent to Brazil? A. Yes.

4023 Q. Do you get in this trade from New York as high a class of merchandise, bearing as profitable a rate of freight, taking it by and large, as moves from England and the Continent to Brazil?

MR. BALDWIN: I object to that upon the ground that he asked merely for his opinion and conclusion.

MR. SPOONER: He asked for the facts.

MR. BALDWIN: He asked is it or not a higher class of freight. The question is what the freight is.

4024 Q. (Question read.) A. Not by any manner of means. A steamer of the same size loading at the same time under exactly the same tariff rates in London or Hamburg would make a very much larger freight list, because it would get velvets, rhine-wines, a large proportion of high class freight, which would take the high class rates in the tariff; whereas, the boats from here get a very, very large proportion of low class freight. Further than that our expenses here would be very much higher in the way of labor and dock charges are very much higher, so that while our earnings are less our expenses are more.

Q. So that assuming a parity of rates between the

European tariff and our own it would be a fact that the 4025
American merchants were really placed on a better footing for the trade with Brazil than the merchants from Europe shipping at the same rate.

MR. BALDWIN: I object to that, first because it is leading—I make the general objection as immaterial, irrelevant and incompetent, and asking purely for a conclusion which he is not competent or called upon to give.

Q. You may state your answer. Assuming the parity of 4026
rates in the tariff between the Continent and Brazil, and between New York and Brazil, would it then be a fact that the American merchants would be on a better footing trading with the Brazils than the European is? A. I should say, rather the steamship line is put on a worse footing, because the shipper of the same class of merchandise from here is on the same footing as the shipper of the same class of merchandise from Europe, and the net result to the lines is very much worse because of the larger proportion of low class freight as against the larger 4027
proportion of high class freight from Europe.

Q. In other words, you think that you would be justified in charging a larger rate from here to Brazil, a higher rate, than you do in the Continent to Brazil for the reason you have stated?

MR. BALDWIN: I make the same objection.

A. I think the principals would be entirely justified. The only reason they do not is the matter of policy and the importunities of their New York agents who are try- 4028
ing to earn their bread and butter, and to do so trying to increase the trade from New York to Brazil.

Q. Therefore, as I repeat, they have their principals make the rates as low as they can? A. That is the idea exactly.

Q. I think you said in answer to Mr. Baldwin yesterday that the most of the steamers you believe—that were trading from England and the Continent to Brazil—were largely passenger steamers, and that the cost of operating them was perhaps greater than the cost of operating the majority of the steamers that go from here? A. I said to

4029 Mr. Baldwin, as I must say to you, that I know very little about the European steamers, but I have been told since yesterday——

MR. BALDWIN: I object to what he has been told since yesterday. He certainly cannot testify to that.

THE WITNESS: It is only a question of fact, Mr. Baldwin; I can get it very easily.

4030 Q. Whatever the proportions may be, isn't the additional expense of operating a passenger ship offset by the passenger fares? A. Very much more than offset.

Q. In other words, the European lines had the additional profit which comes from the carriage of passengers, which the lines from here do not have? A. Yes, that is correct.

MR. BALDWIN: This is all subject to my objection. I don't want to put in objections all the time; I want it understood I don't have to object.

4031 Q. I think you said, or some of the witnesses said, there was a considerable amount of emigrant traffic between England and the Continent to Brazil? A. Very large to South America. The steamers going to Brazil also run down the River Plate with large quantities of steerage passengers.

By Mr. Burlingham:

4032 Q. I notice in reading over the testimony yesterday, Mr. Sparks, that you thought that the Lamport & Holt Line charged 10% more than the European rate; I call your attention to the minimum to the tariff of European freight rates, Petitioner's Exhibit 158 for identification, the first paragraph on page 2, entitled "Conditions," and ask you whether the tariff rates from Europe to Brazil do not carry a 10% primage? A. It says so here, yes (after examination).

Q. You have no knowledge to the contrary, I suppose? A. No.

Q. And is it not a fact that on the passenger boats from Europe to Brazil an additional charge of two shillings six pence and five shillings is charged as a premium? A. I am not able to testify, Mr. Burlingham; I don't know. I think it is entirely probable, but I don't know.

MR. BALDWIN: I ask to have stricken out what he 4033
thinks probable.

MR. KIRLIN: There is one further question I have in mind that I would like to ask. I think you said, Mr. Sparks——

THE WITNESS: I think my testimony of yesterday said that the Lamport & Holt Line had a right to charge 10% more; I didn't say that they did charge it.

By Mr. Burlingham:

4034 Q. Your exact testimony is as follows, on page 1688. Mr. Baldwin asked you, or Mr. Montgomery, rather, "And the rates that the Lamport & Holt Line charge on their steamers are 10% above that, aren't they? A. They may be. I don't know whether their lines are——" And then you were interrupted. Then at the bottom of the page the long question was put to you and you answered it, "Yes"; that is at the bottom of the page 1688 of yours? A. No, Mr. Burlingham; before that you will find they say——

4035 Q. I inferred from that that you thought the Lamport & Holt Line charged on cargoes carried from New York 10% more than was charged from Europe. Did you mean to give such an impression? A. Not at all. I said here two or three times that they may charge 10% more than the rates from New York.

Q. You mean they are permitted to under the agreement? A. They are permitted to under the agreement. But I don't know whether they do it always. I say again on page 1689 I don't know about it; I believe they do most of the time, but they have the right to do it; whether 4036
they do or not is their own affair.

Q. And when you speak of their right to do it you refer to the terms of the agreement annexed to the petition? A. Yes. I think we brought that out somewhere. Yes, Mr. Montgomery says here under these agreements they have the right to as far as your conference is concerned, and I said yes.

Q. When you were testifying yesterday had you in mind what I call your attention to now, that it is expressly provided in the European tariff that the rates carry with them a 10% primage? A. I had never seen that clause in the European tariff before.

4037 By Mr. Kirlin:

Q. I was going to ask you, Mr. Sparks, to state what experience you had had as a merchant. You said you had experience here in New York as a merchant? A. I was the representative here for seven or eight years of a large firm of commission merchants in China, China and Japan; I had charge of all of their office and we did quite a considerable export and import business.

Q. What was the name of the firm? A. Shewan, Tomes & Company.

4038 Q. That is one of the largest mercantile firms in China, isn't it? A. Yes, it is.

Q. Did it not succeed a firm which was also a very large firm in China for many years? A. It succeeded the largest firm probably that ever was in China, Russell & Company.

Q. So that you spoke not only with knowledge derived from steamship experience but from your knowledge derived from your mercantile experience? A. Yes; I had quite a large mercantile experience at that time.

4039 Re-Direct Examination by Mr. Baldwin:

Q. Now, Mr. Sparks, according to Exhibit 1, which is the homeward—and taken with respect to the homeward provisions in Exhibit 1, being the conference agreement, the Hamburg Line agreed to withdraw their service to New Orleans; that is right, isn't it? A. I have not in mind which is Exhibit 1. If I may look at it. I would like to know whether it is the pooling agreement or the traffic agreement.

Q. The traffic agreement? A. (After examination.)
4040 Yes.

Q. Did you participate in any of the negotiations that led up to the making of that agreement? A. I did not.

Q. This was made on February 14th, 1908; where were you then? A. I was in New York.

Q. And in connection with what company, Funch, Edye & Company? A. Funch, Edye & Company.

Q. You say that the Hamburg Line prior to that agreement had put on boats to New Orleans as a retaliatory measure? A. As I understand it.

Q. You refer to the period in 1907 when there was a com-

petition—what we call the competitive era or the rate war 4041
era? A. Yes.

Q. Now, at that time you say there was no conference; isn't it a fact that there was a conference or an agreement tantamount to a conference between the Lamport & Holt Line, the Prince Line and the Union Line? A I testified yesterday, Mr. Baldwin——

Q. I don't care what you testified yesterday; I want you to answer my question? A. I will answer your question.

Q. You will answer it in my way now. I am on re-di- 4042
rect and I want you to answer it? A. I will answer it any way you like——

Q. Just put the question. I think you will save a lot of time; I don't want to be at all harsh about this, but I want you to answer as nearly responsive as possible. (Question read as follows: "Now, at that time you say there was no conference; isn't it a fact that there was a conference or an agreement tantamount to a conference between the Lamport & Holt Line, the Prince Line and the Union Line.")? A. Will you please tell me at what 4043
time?

Q. This is in 1907, and about the time that the Hamburg-American Line put on the retaliatory boats to New Orleans? A. I don't know.

Q. Do you know whether or not that prior to the time the Hamburg-American Line took over the Union Line, the Union Line, the Lamport & Holt Line and the Prince Line were operating under some sort of agreement with reference to sailings and rates, or either of them, from here to Brazil and return? A. I think they were, but I was not connected with the business until the end of 1908. 4044

Q. About what time was it that the Hamburg-American Line put on boats to New Orleans for the purpose of retaliation? A. It must have been somewhere in the summer of 1907.

Q. And their purpose was to retaliate upon these lines, and for what purpose? A. I am not sufficiently acquainted to be able to tell you; I only know that they had fallen out.

Q. Since you state that they put on these boats for the purpose of retaliating upon the other lines, what did you mean when you used the word "retaliation"? A. I only

4045 know that they had not been in the habit of sending boats to New Orleans, whereas the other lines had, and when they fell out they put a service on to New Orleans, which was withdrawn when they became friends again.

Q. Did you use the word "retaliation" advisedly, or is it simply a matter of inference upon your part that they put the boats on for the purpose of retaliation? A. It was part of their method of retaliation; I don't know how else I can describe it. I don't know of any other word to use.

4046 Q. They had a falling out in what respects with the other lines? A. I don't know.

Q. At the time they put on these boats had they taken over the Union Line? A. They must have, or they would not have been in the business.

Q. During the time and after they took on the Union Line did they enter into conference with the other lines in any particular period in 1907? A. I think they did for a short time.

Q. Then you say they had a falling out? A. Yes.

Q. What occasioned that falling out? A. I don't know.

4047 Q. You are one of the parties defendant in this suit, aren't you? A. Yes.

Q. You were examined in chief some months ago, were you not? A. Yes, sir.

Q. And you expected that you would be examined by counsel for the defendants with reference to this suit? A. I expect so, yes.

Q. And you refreshed your recollection about facts that you thought were pertinent to the enquiry? A. I have no recollection of those facts, as I was not connected with the

4048 business then.

Q. From whence came the suggestion, or the information, that there were boats put on by the Hamburg-American Line prior to the conference agreement in suit, which were put on for the purpose of retaliation? A. I have no doubt I heard my partner speak about it.

Q. And have you looked up the matter to ascertain what was the cause of this offensive action on their part? A. I did not.

Q. Now, the Hamburg-American Line putting on the service you speak of, did it include service from New Orleans to the Brazilian ports? A. I believe not.

Q. It was only a service with reference to coffee, was 4049
it? A. I think so, yes.

Q. Is it not a fact that the Hamburg-American Lines, during the time that they were operating boats to New Orleans came in either with full cargoes of coffee or very nearly full? A. I have no knowledge whatever of what they carried.

Q. You did not look that up? A. No.

Q. You have said that there was not enough cargo for three lines; how, then, if you can make that statement, do you know that the Hamburg-American Lines did or did 4050
not come up with full cargo or fairly full? A. I did not make that statement. I said that I did not know, but judging from the scarcity of cargo to New York, I judged that the cargo to New Orleans would be still more scarce and that there would not be room for three lines.

Q. Then you do not mean to say as a fact they did not come up full or fairly full? A. I have no information on the subject.

Q. Now, this retaliatory service that you have spoken of by the Hamburg-American Line ceased immediately 4051
when this conference agreement was made? A. I have no doubt it did.

Q. And in pursuance to that agreement? A. No doubt.

Q. Referring to your testimony upon cross-examination in reference to the delay, or the times of sailings, or the time it took to load the boats from the Brazilian ports to New York, were those sailings where there were these delays, the long delays, due in any respect to the conditions of the weather or anything of that kind? A. I don't know.

Q. Then in making up this tabulation, Defendant's Ex- 4052
hibit 7, you don't know nor pretend to state, what were the causes of the delays there? A. No.

Q. Do you know whether or not at any of the dates mentioned in this schedule there were other boats of the conference lines on the berth at the same time? A. No doubt of it. If they were there 41 days there were lots of conference boats in and out.

Q. So that as a matter of fact, there might have been boats of the conference lines that had been fortunate enough to get a full, or fairly full cargo which might have resulted in these long delays to your line? A. It might be so.

4053 Q. You have given quite a lengthy dissertation here on the advantages to the public generally and the disadvantages that result from the conference, or might result if there was no conference. Now, have you ever been engaged in the tramp business yourself? A. Well, as a time charterer I am engaged in the business.

Q. But as an owner you are not engaged in the business, are you, and never have been? A. I had been in an owner's company for about four or five years.

Q. Are you speaking now then of the considerations
4054 that moved the owner from your experience derived from those facts that you speak of in the chartering of tramps? A. I am speaking of my experience in both the steamship and merchant business.

Q. Has this experience been derived from the fact that you yourself have either personally as an owner or in relation with an owner operating tramp steamers as tramps in various parts of the world? A. Yes, I have done that.

Q. How long ago? A. I am doing it to-day.

Q. Then what line are you speaking of? A. I am talking of the United States Shipping Company.

4055 Q. Where do they have their office? A. In New York.

Q. What business are they engaged in? A. As freight contractors.

Q. They are not the owners of the tramps? A. They are the time charter owners.

Q. How many vessels do they have? A. From a dozen to twenty-five.

Q. And they operate these boats all over the world? A. Yes.

Q. And it is from that particular experience that you
4056 are now giving your statement? A. That is part of my experience.

Q. Is it operated as a part of any of these conference Lines? A. No.

Q. No relation to it? A. None whatever.

Q. Nor with Funch, Edye & Company as agents for any of these conference lines? A. Nothing whatever to do with it.

Q. Operating in respect to any conference lines? A. No.

Q. Now, with reference to your experience as a merchant, how long has it been since you have had experience as a merchant? A. 1907.

Q. And with what company was that? A. Shewan, 4057
Tomes & Company.

Q. You say they are one of the largest firms engaged in the China trade? A. They are.

Q. And they succeeded Russell & Company? A. They did.

Q. Shewan, Tomes & Company, are the agents, are they not, for some of the lines engaged in what is known as the Asiatic trade? A. They are agents for the American Asiatic Steamship Company.

Q. And the American Asiatic Steamship Company is 4058
likewise operating under conference agreements from Asiatic ports to the United States, is it not? A. Yes.

Q. And Shewan, Tomes & Company are parties defendant in a suit that the Government has already brought to set aside that agreement or conference? A. You are quite right.

Q. Shewan, Tomes & Company do not own boats themselves, do they? A. They own a company that does own some boats.

Q. What company is that? A. It used to be called the 4059
China-Manila Steamship Company; it is now called the Philippine Steamship Company, I think.

Q. And do they operate from the Philippines to New York or American ports? A. From the Philippines to Hong Kong.

Q. Is it not a fact that Shewan, Tomes & Company being very large accumulators of merchandise have practically forced themselves into this Asiatic conference? A. Not with their own merchandise, no.

Q. You don't think that is so? A. I know it is not so.

Q. Do Shewan, Tomes & Company—have they got an 4060
office here? A. Yes.

Q. They represent this American Asiatic Steamship Company as agents in some of the Asiatic ports, do they not? A. In all of them, I think, except Singapore and Manila.

Q. And they get a certain compensation, do they not, as agents for securing and booking merchandise on that line? A. They did in 1907; I don't know what they do now.

Q. Don't you understand it to be the same? A. I should presume so, yes.

Q. Does the Hamburg-American Line or Funch, Edye &

4061 Company for the Hamburg-American Line have a great many merchants on their list? A. What list do you mean?

Q. Their sailing list, or shippers list? A. I suppose we send out freight circulars or sailing circulars to a large number of people.

Q. Have you been engaged in business as a merchant yourself since 1908? A. I testified I was agent here for a firm of merchants.

Q. How long were you agent for them? A. From 1900 to 1907.

4062 Q. My question was since 1908? A. I beg your pardon; I thought you said 1898.

(Question read as follows: "Have you been engaged in business as a merchant yourself since 1908?")

A. No.

Q. Have you ever done any business as a merchant with any line which was not a conference line? A. Yes, when I was a merchant I don't think there was a conference to
4063 China, most of the time anyhow.

Q. Do Shewan, Tomes & Company do any business with any line that is not a conference line? A. Did they then?

Q. Yes? A. Of course they did. I was acting for them.

Q. What lines—now I am speaking of lines—did they do business with or did you for them do business with that were not in some conference somewhere? A. The American-Asiatic Steamship Company was in no conference.

Q. Mr. Sparks, is it not a fact that as soon as the Ameri-
4064 can-Asiatic Steamship Company was formed, about 1905, it went into the Asiatic conference? A. Your information is entirely incorrect.

Q. Then that is wrong, is it? A. That is quite wrong; it was not formed in 1905.

Q. Well, whenever it was formed, didn't it immediately go into the conference, or very shortly? A. It did not.

Q. How long after it started before they went into the conference? A. Two or three years anyhow; I don't remember exactly, two or three years of very bitter fighting.

Q. For the purpose of the viewpoint of merchants with reference to the advantages of the conference, what mer-

chants have you talked with? A. I have talked with num- 4065
bers of them, and there has been testimony——

Q. I am not asking you about testimony; I asked what merchants you have been talking to; who have you talked with? A. Do you want me to name them?

Q. Certainly? A. Well, Mr. Kulenkampff of Wessels, Kulenkampff & Company; Mr. Ring of Mayer & Carew; Mr. Kirkpatrick of Crossman & Sielcken; Mr. McCutcheon of Holt & Company; Mr. Bradley of Peabodys; Mr. Trowbridge of Strong & Trowbridge; Mr. Rosenfeld of Guitermann, Rosenfeld & Company. Perhaps that is all I have 4066
spoken to recently about it.

Q. What business is Wessels, Kulenkampff in? A. They are in the export business.

Q. What line? A. I guess all commodities.

Q. With which member of that firm did you talk? A. I said Mr. Kulenpkampff.

Q. When did you have the conversation with him? A. I don't remember the exact date.

Q. What year? A. 1913.

Q. Since this suit was commenced? A. Presumably; the 4067
suit was commenced in 1912, I think.

Q. Are they large shippers? A. Quite considerable.

Q. Do they make time contracts with conference lines? A. I don't know. I think probably not.

Q. Mr. Ring of what firm? A. Mayer & Carew.

Q. Are they a New York house? A. Yes.

Q. What is their line? A. General commission merchants.

Q. Shippers over your line? A. Yes.

Q. Large shippers? A. Quite. 4068

Q. You have time contracts with them? A. I think not.

Q. Kirkpatrick of Crossman & Sielcken, what about Crossman & Sielcken; they are coffee importers, aren't they? A. I don't think Mr. Kirkpatrick knows anything about coffee. I do not talk coffee to him; I don't know anything about it myself.

Q. What did you talk with Kirkpatrick? A. I meet him on the exchange regularly, once or twice a week.

Q. And each time that you meet him you talk about the advantages to shippers with him? A. I should say not.

Q. When did you talk with Ring? A. I meet him frequently too.

4069 Q. What did you talk with him about the advantages to shippers? A. Mr. Baldwin, I think we will perhaps save time by saying that I have spoken with all of these gentlemen in regard to the Alexander enquiry and it was probably on those occasions that the advantages and disadvantages of the conference system has been discussed.

Q. When was this Alexander enquiry? A. I don't remember; all winter, I think.

Q. You mean before the House of Representatives? A. The papers have been full of it.

4070 MR. KIRLIN: In January and February?

THE WITNESS: It was this last winter sometime.

Q. Then you have talked with these various firms or men that you speak of since this suit was commenced and during the pendency of this Alexander enquiry, is that right? A. Yes, most of them told me of letters that they have received from Mr. Alexander and their replies and so on, that has brought up a kind of general discussion.

Q. What business is Holt & Company in? A. The flour
4071 business.

Q. They have time contracts? A. What do you mean by time contracts?

Q. Time contracts, where they ship with the conference lines under contract and not by the ordinary owner, that is, a person who hasn't got a contract? A. Everybody who ships makes a contract.

Q. We have been discussing time contracts, or a contract for a specific amount within a number of months? A. Then Mr. Montgomery's idea seems to be a little dif-
4072 ferent; he seems to think a year is a time contract.

Q. I am telling you now that you know as well as I do what I mean by time contract or contracts to confine all of their shipments for a given length of time? A. Yes, but if you will tell me what you know I know that won't help me to answer your question.

Q. I am asking you a question and you tell me what you know, and if you don't understand time contracts say so? A. Will you tell me what you mean by time contracts?

Q. I don't have to do that; you know; go ahead? A. I am afraid I cannot answer your question.

Q. With any of these parties which you have named do

you or have you been operating where they make con- 4073
tracts with your firm or with any of the conference lines by which they ship all of their shipments, or agree to ship all of their shipments over your lines for either a specific length of time, for a specific amount, or under contracts where they agree to ship commodities by giving you 20 days' notice and they get the advantage of a reduced rate; do you understand that? A. I am afraid I cannot. I am sorry; I should be very glad to answer it, Mr. Baldwin, but I do not understand it. You say all of their shipments and then you say for a given amount; which do you mean? 4074

Q. Either; you may make your choice? A. We make contracts for specific amounts with them, though not necessarily at reduced rates; I don't suppose ever at reduced rates.

Q. When you say specific contracts you mean for specific sailings? A. For specific months of shipments probably.

Q. Have you got any contracts, or made any contracts, with any of these parties which you have named here of a like nature as that which you made with the Singer Company? A. No, I don't think so. 4075

Q. Now, in these conferences did you discuss with them the advantage of the frequency and regularity of sailings; was that specifically discussed? A. Certainly.

Q. And the stability of rates? A. Certainly.

Q. And the fact that you were supplying a higher class of boats? A. I don't recall that.

Q. And therefore that they would get the advantage, some advantage in insurance rates on cargo? A. It is quite likely it was mentioned, but I don't remember it specifically. 4076

Q. Did you also discuss with them the supply of terminal facilities? A. Yes, often.

Q. And you pointed out, or did they point out to you, wherein your facilities were any better now than they had been before the conference? A. Our minds met exactly on that point in our case.

Q. And your facilities are better I suppose than they were in 1907? A. Undoubtedly.

Q. I mean terminal facilities? A. Undoubtedly.

Q. And all of the conference lines also had better facilities? A. I don't know about the other lines.

4077 Q. You were giving testimony here as to the advantages of conference, among other things the supply of better terminal facilities, so that they would not have any difficulty about storage? A. Certainly.

Q. Well now, Mr. Sparks, has the Prince Line any better facilities now than it had in 1907? A. Very much better, because if the cargo misses the Prince boat it is transferred immediately across the slip to our dock, and they have advantage of our terminal facilities as well as their own.

4078 Q. How about the Lamport & Holt, have they any better facilities than they had before? A. They have the advantage of the Prince Line facilities and ours if they shut out any cargo.

Q. The docks are practically the same? A. Our dock is the same.

Q. Is your dock near the Lamport & Holt dock? A. I don't believe I know where the Lamport & Holt docks are.

Q. Did you ever see their docks? A. I don't know that I did; I may have.

4079 Q. Do you know where the Prince Line docks are? A. Yes, it is right next to ours.

Q. Right next to yours? A. Yes.

Q. Now, in what respect is the facility of storage either on your dock or the Prince Line dock superior to what it was in 1907? A. In cargo——

Q. No, the dock? A. It is immensely superior; it is trebled——

Q. It is larger? A. It is trebled.

Q. The dock? A. It is trebled because each line can use
4080 the docks of the other line in case cargo is shut out. The merchant does not have to take it back and store it at his own expense; he sends it to the dock of the next steamer.

Q. And do you make that arrangement with any and all of the shippers who send their cargo? A. By all manner of means; if shut out of one ship it goes right to the next.

Q. And is the size of the docks or the sheds increased over what they were in 1907? A. No, but they can use three now, whereas they could only use one before.

Q. I am asking if they are increased? A. I understood you to mean the same dock——

Q. You can judge whether the dock has increased in size

or the sheds in any way? A. I don't see that that has any- 4081
thing to do with it.

Q. It don't make any difference what you can see about it; I am asking the question. After a while you are going to be responsive to my question. A. I shall be very glad to answer a direct question.

Q. I know you are one of the most willing witnesses I ever saw. I put the question and I want you to answer it.

MR. SPOONER: I don't think it is fair to be sarcastic.

MR. BALDWIN: I think I am justified in this this 4082
time.

(Previous question read as follows: "And is the size of the docks or the sheds increased over what they were in 1907"?)

A. Ours is not.

Q. Since your dock is next to the Prince Line, is that increased? A. It may be so. I know at one time the Prince Line had only a part of the pier and now they have the whole of it. 4083

Q. I am asking you about 1907? A. You asked whether it increased since 1907 and I say it may be; they at one time had part of the dock.

Q. Do you know whether it is or not, Mr. Sparks?

MR. KIRLIN: You have testimony about that already.

MR. BALDWIN: Yes, and we have testimony of two witnesses that they have not increased. Now, I want to see what he says about it. One of the witnesses was specifically cross-examined by me upon 4084
the facilities of storing down there on those docks.

Q. If you know answer it; if you don't know say so. (Question read.) A. I said ours is not.

Q. I am talking about the Prince Line, has that increased? A. They are using the same pier; whether they have the whole of it I don't know.

Q. In what respect is the facility for insurance increased by the conference? A. When the owners put in a better class of boats the underwriters very gladly reduce the rate of insurance.

4085 Q. Have all the conference lines better classes of boats than say, for instance, the Lloyd Brazileiro? A. Very much better.

Q. All of them? A. I think all of them.

Q. You are familiar with the Lloyd boats, are you not? A. Yes, we often have the same boats on charter ourselves for other business.

Q. Are all of the boats of the conference line equal to each other in the question of class? A. They are not; some are old and some are new.

4086 Q. Then is the shipper benefitted by the fact that his shipments go in boats of the conference lines that are not of the best and equal to the best in the conferenec lines? A. I am not an expert on insurance, but I think the rate usually applies to the whole line.

Q. Now, then, as a matter of fact, the insurance on the commodity shipped is not based whatever on the quality of the ship? A. Yes, it is, based on the quality of the ship.

Q. Then it must follow that if the ships of the conference lines are unequal that the rates quoted on the poor
4087 ship would be higher than on the better ship in the conference line? A. Only if she was very old. The reputation of the new ships would help the other ships if they were not very old.

Q. In other words, that if a new ship went on the line and although it was a better built and larger and more up to date boat that fact would affect the insurance rates upon another boat that was older and not so large and not up to date, is that it? A. It would unless she was very old.

4088 Q. So then, as a matter of fact, the rate of insurance that would be charged to the shipper would not be based upon the actual quality of the boat in which the merchandise was to go, but upon the relative standing of another boat in the conference which was better, is that it? A. Yes, I think that has a great bearing on it.

Q. Do you mean to say that at the present time, or since the conference, the insurance companies here have been making rates on your boats for shippers at a more advantageous price than upon any other boats that go from here to the Brazilian ports? A. I should think the rates were probably lower than——

Q. Do you know that? A. I don't know; I should think so. 4089

Q. Don't you know, as a matter of fact, the Lloyd's rate is the same as yours? A. I do not. I should not think it is.

Q. In ascertaining what the insurance charges are before testifying here, did you look up to see whether or not the conference boats, or the poorer ones of the conference boats even, were getting a better rate for the commodities shipped than the Lloyd Brazileiro were getting? A. I told you I did not know what the difference was, or if there was any difference. 4090

Q. You don't know, as a matter of fact, if there is any, do you? A. No; I should think there is but I don't know it.

Q. Why do you say you think there is if you don't know anything about it? A. Because they are better boats and the insurance companies always make a lower rate for a better boat.

Q. Would it surprise you a great deal, Mr. Sparks, to know the rate has been the same right along? A. Yes, it would very much. 4091

Q. You attend these hearings and I guess you will find out. Now, it is your understanding then that the insurance company quotes better rates for insurance upon shipments going out in the poorer class or older boats of the conference lines than the boats going out on the Lloyd Brazileiro or any other line or tramps? A. Not simply because they are conference lines, but because they have better boats in their lines.

Q. The conference lines from time to time charter boats, don't they? A. They do. 4092

Q. Are all their chartered boats better than the Lloyd Brazileiro? A. No, the same class.

Q. These chartered boats of yours are open for the ordinary shipper, I suppose? A. Yes.

Q. And for your contract shippers? A. Yes.

Q. Do they get a better rate on those chartered boats than they do on the Lloyd Brazileiro? A. I don't know, but they form such a small part of the whole fleet that it would hardly make any difference.

Q. Are you familiar with the number of chartered boats that the other lines employ and have been employing? A.

4093 With the exception of one or two of the Lamport & Holt Line's, the Germans are the only lines that have chartered so I ought to be familiar with it.

Q. Is it not a fact that in 1912 the Hamburg Line chartered thirteen boats? A. I did not know it was as many as that. I know they had more employment for their own fleet and had to charter a good deal in 1912.

Q. Now, take those thirteen boats, or any of them, that were chartered in 1912, and the evidence is simply that there were thirteen boats chartered in 1912—Mr. Betts tes-
4094 tified to that effect—are you prepared to say that the insurance rate to the shippers was less on those boats or any of them than upon the Lloyd Brazileiro? A. No, I shouldn't say that.

Q. Are you prepared to say that during 1912 the rates of insurance were less to shippers on any one of those chartered boats than any other chartered boats that went out from here to the Brazil trade? A. I just said I don't think so.

Q. You don't know anything about it, do you? A. No,
4095 I don't know as I do.

Q. Well, your boats—where do your boats dock? A. They discharge their coffee cargoes on the East River in the neighborhood of Wall Street Ferry, I believe.

Q. Who is the owner of the dock? A. The New York Dock Company, and they load their cargoes at Pier 3, Bush dock.

Q. That is owned by the Bush Terminal Company? A. By the Bush Terminal Company and leased by the Associated Operating Company.

Q. Has your line or any of these conference lines to
4096 your knowledge expended any money since the conference agreement in extending or enlarging any of the docks that they occupy, or the sheds, for the purpose of storing merchandise? A. Pier 3 has been changed.

Q. Did you change it, or did the company that got it change it? A. The Associated Operating Company changed it.

Q. Are there other lines of boats that occupy the docks of the same company? A. Yes.

Q. A general extension of the size for all, were they not? A. Yes.

Q. Well, as a matter of fact, Mr. Sparks, terminal facil-

ities all over New York harbor have increased both in size 4097
and capacity for various purposes very much since 1908, haven't they? A. I just testified that our dock has not increased in size, except the change in the structure.

Q. Yes, but generally speaking, they have increased, haven't they, all over? A. There have been a few new docks built, yes.

Q. Don't you know, as a matter of fact, that the City itself has been to large expense in extending docks and building new docks, both on the North and East River? A. Principally in the Chelsea district for the passenger 4098
steamers.

Q. The Hamburg-American Line have increased the size of their docks in Hoboken, haven't they? A. I don't know.

Q. You say that the shipper would have the privilege of storing his merchandise if there was not room on say your docks to store them, on the Prince Line docks, is that right, and vice-versa? A. No, I said as cargo arrived too late, or was shut out of one line it would be immediately transferred to the dock of the other line.

Q. Would that apply to the shippers who did not have 4099
contracts similar in nature to the Singer contracts? A. Certainly.

Q. Everybody? A. Everybody.

Q. Do you know whether or not—do you know what arrangement the Lloyd Brazileiro had for taking care of and storing merchandise? A. I think they have a pier at the Bush Terminal also.

Q. About the same size and space, I suppose, as that which you have over there? A. I think they only have part of a pier. 4100

Q. Do you know it or just think it? A. I just think it. I think it is correct too.

Q. You think it is correct? A. Yes.

Q. Since you think it is correct and are still thinking, have you made any examination to know whether or not, they occupy the whole or only part of a dock over there? A. I never thought of it before this minute.

Q. Then upon what do you base the information for this thinking? A. Because I think I have always seen other steamers on one side of the pier, which would naturally lead me to believe they did not own the other; although I am not at all sure; they may have it all.

4101 Q. Among other advantages which you referred to as inuring to the general public is the regularity of sailings? A. Yes.

Q. Growing out of the conference? A. Yes.

Q. Do you mean by that the number of boats that are placed upon the berth here regularly? A. Yes, certainly, and the reliability of their sailings.

Q. Their sailing time here to the Brazilian ports depends very largely upon when they arrive, does it not? A. At the present time our line is sailing on a fixed date.

4102 Q. Then none of these long delays that you have referred to in this schedule applies to the present condition? A. What long delays do you mean?

Q. In Rio or Santos? A. If a boat is delayed down there the line will put in another steamer here to make up for it. They have done it frequently. They chartered a steamer the other day brought all the way from Hamburg in ballast in order to make their sailings, because their boats were delayed in Brazil, at immense expense.

Q. How about the regularity of the sailings of the other
4103 conference lines? A. The Lamport & Holt Line has been regular for years, a great many years.

Q. And they have not been then delayed in their sailings from here because of any delay down in the Brazilian ports, have they? A. I don't know. They may have had to put in other boats too, but I don't know anything about it.

Q. Don't you know as a matter of fact that they have not put in other boats other than their line boats? A. Certainly I do not.

4104 Q. How about the Prince Line, have they been regular? A. Fairly regular; they have been a little off lately.

Q. Then your line is the one line out of the lot that has been regular and constant in its sailings? A. Can we have the testimony read for the last few questions and answer?

Q. No, you can state whether or not? A. I did not say so.

Q. It don't make any difference; I am asking you now is it so? A. I did not say so.

(Previous question read as follows: "Then your line is the one line out of the lot that has been regular and constant in its sailings?")

A. I just testified that the Lamport & Holt Line had been 4105
regular for years.

Q. You know that from your own knowledge? A. Yes.

Q. And then the Lamport & Holt Line and your line have been regular in their sailings and the Prince Line has not been altogether regular, is that right? A. They were running for a long time, but they have been a little off their dates lately.

Q. Do you know whether or not that the Lamport & Holt and Prince Line boats have been held up much when they were in Brazilian ports? A. I don't know anything about 4106
it.

Q. And do you know whether or not they have brought on to the berth here extra boats for the purpose of making sailings due to delays in Brazil? A. I don't know.

Q. Do you know whether or not there were more boats of your line—more sailings, rather, of your line, in 1908 than there were in 1907? A. I don't know. I think you have a record of all the sailings in evidence here.

Q. I am asking you? A. I don't know.

Q. Do you know whether or not your line had more 4107
sailings in 1909 than it had in 1908? A. No; I have no figures before me.

Q. In 1907 when these lines were not in conference the German Lines according to the evidence in this case had 18 sailings with 68,291 tons, aggregate; in 1908 you had 19 sailings with 52,966 tons. Now, in 1909 you had 13 sailings with 56,077 tons. Do I understand that with reference to this regularity of sailings you had more boats or the sailings were more advantageous to the public in 1908 and 1909 than it was in 1907? A. I don't know anything about 4108
1907.

Q. But you have testified among other things here to the great advantage to the general public, including the regularity of sailings? A. I have.

Q. Now, are you prepared to say that during the time that this competitive era was on there were any more regular sailings of those now in conference than there were in 1907 when they were not in conference? A. You are talking about the era of competition both times.

Q. Do you understand the question? If you do not I will repeat? A. I do not understand the question.

Q. I will try to put it a little simpler. Do you know

4109 whether or not there was any more regularity of sailings after the conference was formed in 1908, and in that year and the following year, than there was in 1907 with reference to the boats of the conference lines? A. I don't know anything about the sailings in 1907.

Q. Well then, from where did you draw your conclusion that it is to the advantage of the shipper to have regularity of sailings if you don't know what the condition was in 1907 when there was no conference? A. There have been many other conferences in many other——

4110 Q. But you don't base your testimony then upon any conditions with reference to the regularity of sailings that obtained here in 1907 during this competitive time? A. I base it on what I know to be universal.

Q. That is not responsive to my question. Read it again.

(Previous question read as follows: "But you do not base your testimony then upon any conditions with reference to the regularity of sailings that obtained here in 1907 during this competitive time?")

4111 Q. Yes or no? A. No.

Hearing adjourned to Friday, June 13th, 1913, at 10.15 o'clock A. M.

NEW YORK, June 13, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

4112 MESSRS. BURLINGHAM, MONTGOMERY & BEECHER; by Charles Burlingham, Esq., and Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*

MESSRS. SPOONER & COTTON; by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

MESSRS. CONVERS & KIRLIN; by J. Parker Kirlin, Esq., M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

THOMAS A. SPARKS, recalled.

RE-DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Sparks, I have already interrogated you concerning the number of sailings of your line in three years

and the amount of tonnage. You remember that, don't 4113
you? A. I remember you read some figures.

Q. Now, in 1910 your line had 16 sailings and 93,126 tons in those 16 sailings; in 1911 you had 13 sailings with 85,030 tons; and in 1912 you had 126,786 tons in 18 sailings. Now, how frequent were the sailings in 1908, 1909, 1910, 1911 and 1912, so far as regularity was concerned? A. In those years we had a boat a month, and occasionally extra steamers to bring them up to the numbers you have cited.

Q. You don't mean to say that in 1909 you had any 4114
extra steamers with only 13 sailings and 56,077 tons? A. That was our extra sailing, evidently.

Q. Do you mean more than your quota? A. More than a monthly service.

Q. Now, your outward sailings under that agreement in Exhibit 1 of the petition, of the Hamburg Line, is to be 24? A. That is not my recollection of the agreement. My recollection was that they were not to be more than 24.

Q. Well, it says that the departures of the lines, unless otherwise mutually agreed upon, shall be as follows, and 4115
then mentions the Lamport & Holt and Prince Line and then it says "The Hamburg Lines combined, 24 sailings per annum." Now, then, assuming that you are authorized to have 24 sailings outward, then in the year 1908, 1909 and 1910, in fact down to the present time, you have not had the number of sailings that you are authorized to have under the agreement? A. That is correct. At the present time we are running a service of two boats a month.

Q. Now, were the actual sailings, in point of time, any more regular in 1908, 1909, 1910 and 1911 than it was in 4116
1907? A. I don't know what the sailings were in 1907.

Q. Well, you had 18 sailings in 1907 and 62,291 tons as against 19 sailings with only 52,966 tons in 1908. Would you say that in view of those facts that your sailings were any more regular in 1908 than they were in 1907? A. Evidently we had one more sailing and there was less cargo; we carried less cargo.

Q. Well, that might all be true, but were the sailings any less regular? A. I think they were more regular.

Q. In which year? A. In 1908, isn't it?

Q. You only had one more sailing, and my question is

4117 as to the regularity of time, as to whether or not the boats left here any nearer the actual time in 1908 than they did in 1907? A. I have no data before me to answer the question.

Q. Well, where would that information be obtainable? A. I think I could get it for you.

Q. I wish you would. I suppose, then, you are not able to state whether or not the regularity, so far as time is concerned, in any of those other years, was any more regular than it was in 1907? A. I don't know what it was in
4118 1907.

Q. Therefore, you can't draw any comparison? A. I cannot.

Q. Now, coming back again, Mr. Sparks, to the firm of Shewan, Tomes & Company, do you know when the Asiatic agreement was formed? A. I think in 1904 or 1905.

Q. Well, my recollection is that you stated yesterday that there was no conference between Shewan, Tomes & Company and their predecessors, Russell & Company, and any of the regular lines in that Asiatic trade westward? A. I did not so state.
4119

Q. What is your recollection about that?

MR. SPOONER: I object to this. That is not proper cross-examination.

THE WITNESS: Do you mean my recollection of the testimony yesterday?

Q. Well, Mr. Sparks, do you remember that I was interrogating you concerning your experience and among other firms that you mentioned who were large shippers was the firm of Shewan, Tomes & Company. You remem-
4120 ber that, don't you? A. Very well.

Q. I asked you if it was not a fact that Shewan, Tomes & Company were themselves steamship agents and had been for a number of years in the Orient? A. And I said yes.

Q. And I asked you if it was not true that Shewan, Tomes & Company had managed to force themselves into the Asiatic conference. You remember that, don't you? A. No, I do not. You asked me whether it was not on account of the large volume of their own shipments that they forced their way into the conference and also whether it was not true that the American Asiatic went

into the conference immediately after the company was 4121
formed, and I told you it was not at the formation of the company, and that there were two or three years or maybe more of very bitter fighting. I have a very clear recollection.

Q. Very bitter fighting between whom? A. The American Asiatic Company and the other lines.

Q. You mean what particular lines? A. The United States & China-Japan Line, the Barber Line and the Houlder Line.

Q. Do I understand you to say that Shewan, Tomes & 4122
Company had no arrangement whatsoever just prior to 1905 at the time of the formation of the Asiatic conference with the regular lines, any sort of an arrangement with reference to their fixing of rates or the sailings or anything of that kind? A. Prior to the formation of the conference there was a bitter fight; there was no arrangement at all.

Q. When was it you say Shewan, Tomes & Company were established? A. I don't know. I didn't say.

Q. Well, then you don't know. When was the American 4123
Asiatic formed? A. I think October, 1902; it may have been 1903, but I think 1902.

Q. Was there any arrangement between Shewan, Tomes & Company and any other of the large shippers out there who also represented the steamship line? A. I don't know what arrangements they had westward. Whatever they were, they were in Hong Kong and I had no knowledge of them.

Q. Isn't it a matter of fact that prior to the conference that the large bulk of the westward trade from the Asiatic ports to the United States was practically controlled by 4124
Shewan, Tomes & Company and one or two other firms? A. I was not aware of any arrangement prior to the formation of the conference.

Q. You know Mr. George B. Dodwell, do you not? A. I do.

Q. How long have you known him? A. Several years.

Q. He is connected with the firm of Dodwell & Company? A. I think so.

Q. And are they one of the conferees in the Asiatic trade to the United States?

MR. SPOONER: That is objected to as immaterial,

4125 irrelevant and incompetent, not proper cross-examination and not within the issues of this case.

THE WITNESS: Yes.

Q. You know, do you not, that an action is pending in the United States District Court against various parties, including Shewan, Tomes & Company, to enjoin them from further operating under the conference agreement from the Asiatic ports to New York?

MR. BURLINGHAM: Objected to as immaterial.

4126 THE WITNESS: Yes.

Q. Now, with respect to the method of business of Shewan, Tomes & Company, who were, as you have stated, the successors of Russell & Company and some other parties, and for the purpose of refreshing your recollection if possible, I read from the record on page 77 in that case, the testimony of Mr. Dodwell: "What connection, if any, did you have with the firm of Shewan, Tomes & Company? A. They were the successors of Russell & Com-
4127 pany, Shewan & Tomes were established in 1891, used to load in connection with ourselves most of the steamers which loaded for New York from China and Japan prior to the formation of any conference arrangement. We two firms probably loaded 90 per cent. of the vessels which came to New York from China and Japan prior to the conference arrangement of 1904. Q. What was the method of business at that time; were there such things as were called annual arrangements? A. Yes, sir. Prior to the establishment of any conference my old employers, Adam-
4128 son, Bell & Company, and the firm of Russell & Company, that my firm and Shewan & Tomes succeeded. Those two firms worked together to obtain steamers to load to New York. They arranged with various owners who were then regularly in the trade that each one should load so many steamers and then we, Russell & Company, and Adamson, Bell & Company, undertook to do our utmost to make an arrangement satisfactory with the owners. We eliminated competition by making this arrangement with all the principal owners. As a matter of fact, these owners loaded, as I say, perhaps 90 per cent. of the total tonnage. Q. Westwards? A. Westwards, yes, sir." Now, in view of that testimony, are you now prepared

to say whether it is true or not true that Shewan, Tomes 4129
& Company did have some sort of an arrangement, annual or otherwise, with respect to that Asiatic trade westward to this country?

MR. SPOONER: I object to that question as not proper cross-examination, the subject not having been mentioned on the direct, relating to an entirely different commerce, and as utterly irrelevant and outside of the issues and pleadings in this case. Not cross-examination.

THE WITNESS: I repeat that I was not aware of 4130
it. I was their New York agent and knew nothing about their Hong Kong arrangements and only joined them in 1897. Here I became their agent in 1900 or 1901; I forget which.

Q. Well, this Shewan, Tomes & Company is the same firm that you refer to that you were connected with and that you said were large shippers? A. Yes, the same firm.

Q. Then you know nothing whatsoever about the conditions that obtained there with reference to the trade 4131
westward? A. Not prior to the formation of the conference.

Q. Now, Mr. Dodwell states here that the agreement, that is the present Asiatic agreement, as being formed in 1904. Does that refresh your recollection so you can state whether that was the agreement or not?

MR. SPOONER: Same objection.

THE WITNESS: I have already said it was in 1904 or 1905, I don't remember which.

4132

Q. Well, anyhow, it is the same firm of Shewan, Tomes & Company that, when ever it was formed, went into that agreement? A. I am not sure whether Shewan, Tomes & Company went into it or the American-Asiatic went in, but it was all part of the same thing.

Q. Now, you spoke also yesterday about some other lines here that were engaged——

MR. SPOONER: Is the American-Asiatic the corporation?

THE WITNESS: Yes.

MR. SPOONER: It is not the same thing then.

4133 Q. Well, Shewan, Tomes & Company owns the stock, does it not?

MR. SPOONER: That is objected to.

THE WITNESS: Some of it.

Q. Who owns the majority of it? They owned the majority of it, did they not? A. I think they did.

Q. And you were the secretary of them? A. I was.

Q. Now, Mr. Sparks, with reference to this other line that you say that you are interested in, the United States
4134 Shipping Company? A. It is not a line, that is a company.

Q. A copartnership? A. No.

Q. Now, is it a corporation? A. Yes.

Q. Incorporated under the laws of what country or state? A. New Jersey I believe.

Q. And when were they incorporated? A. I don't know.

Q. When did you become identified with them? A. When I joined the firm of Funch, Edye & Company.

Q. Well, Funch, Edye & Company practically controlled that company, didn't they? A. They are stockholders in it.

4135 Q. The largest stockholders?

MR. SPOONER: That is objected to as incompetent and irrelevant and impertinent.

THE WITNESS: They are not. I don't remember the exact distribution of the shares, but I think not.

Q. Well then, your interest in that firm is by reason of your connection with Funch, Edye & Company? A. Yes.

Q. I asked you yesterday whether or not the Hamburg Lines came up full to New Orleans. You remember that,
4136 don't you? A. I do.

Q. And you have testified that they did not, and that you inferred that from some other facts. You remember that? A. I said I didn't know, but I inferred they did not.

Q. Isn't that just what I said? A. No, you said I said they did not come up full. I said I did not know, but I inferred they did not.

Q. And didn't the vessels carrying coffee to New Orleans, come up as well filled as the vessels did to New York carrying coffee? A. I don't know anything about that.

Q. Referring again, Mr. Sparks, to the regularity and

frequency of sailings, in answer to Senator Spooner's 4137
question yesterday you said among other advantages to the public generally was that it gave the merchant an opportunity of forwarding his goods at frequent and regular intervals. Now, do you make that statement upon any data as to what the frequency and the regularity of the sailings were in 1907 when there was a competitive time? A. I don't know anything about 1907.

Q. Then you are not prepared to say there were not just as frequent sailings and regularity of sailings of the various lines that went from here to Brazil in 1907 as there 4138
was afterwards? A. I didn't know anything about the Brazil trade in 1907.

Q. So that in giving that opinion of yours as to the advantage to merchants and shippers, you did not take into consideration what had obtained here before this conference was formed and while there was competition between these lines? A. I did not know anything about the sailings in 1907.

Q. You have answered that? A. I was stating an economic fact. 4139

Q. Well, did you take into consideration in giving that opinion, what conditions obtained here in New York with reference to the Brazilian trade during this competitive year? A. I did not. I did not know anything about it.

Q. Isn't it a fact, Mr. Sparks, that it is the passenger boats that make regularity of sailings? A. Not necessarily.

Q. Has it very largely affected the question? A. Not necessarily.

Q. Well, I don't know what you mean by necessarily. Is 4140
it true or not true? I am speaking of this trade to Brazil? A. It is not true because we are at present operating a service which is entirely a freight service and maintaining regular dates of departure.

Q. Well, how was it prior to 1913? A. I think the Prince Line have always been more or less regular.

Q. The question is this, prior to the present conditions you say obtaining in the last eight or nine months, was it not the passenger boats that were the only ones, practically speaking, that were regular in their sailings from New York? A. I haven't the dates before me to answer that question.

Q. When you say that you are now maintaining regular
4141 sailings do you mean by that on fixed dates? A. Yes, unless there is an accident or other uncontrollable causes.

Q. And how long has that obtained? A. For several months past.

Q. Can you state the dates in the several months past on which your boats have departed on schedule time? A. For several months past we have been dispatching steamers on the 10th and 25th of each month.

Q. Do you advertise your dates of sailing in the Journal
4142 of Commerce? A. We do.

Q. Do you mean to say that you have in the last—well, since January 1st, been sending boats off on the advertised time? A. I don't think we began in January.

Q. Well, when do you think you began? A. I think about March, my recollection is about March.

Q. You think then that prior to that time that you were not sending your boats off on the advertised date with any regularity? A. I know that we were not.

Q. Why is that? A. Because we had no fixed sailing date.
4143 It is a new policy for the line.

Q. This is a new policy? A. Yes.

Q. Well, how did that conference differ with reference to your policy, the general advantage to the shipper, prior to that time that you have no fixed sailing time? How did it affect the regularity or frequency in the last five years? A. The sailings would probably have been much more irregular and very much less frequent had we not had a conference.

Q. Well, do you base that upon what happened in 1907 when you did not have any conference? A. I base that upon
4144 what I know the result to the lines would have been, and they would not have been so anxious to put on tonnage.

Q. You mean to say then it would not be for their own interest? A. Certainly.

Q. And that statement of yours is not derived from any fact or information that you had that obtained here in 1907 when they were all in competition? A. I don't know anything about 1907.

Q. Now, on the 6th of February in the Journal of Commerce you advertised the *Macedonia* to sail on the 20th. As a matter of fact that did not sail until the 25th. Now, was that after or prior to this new policy that you speak

of? A. I didn't know we ever advertised a boat for the 4145
20th.

Q. Advertised to sail on the 20th and sailed on the 25th of March, and the advertisement appeared according to this tabulation I have here in the Journal of Commerce on the 6th of February, 1913? A. 1913.

Q. Now, you said here that another distinct advantage to the merchant or the shipper is the advantage of being able to make forward contracts. Now, is your firm or are you personally engaged in making forward contracts to Brazil? A. Do you mean as steamship agents or as 4146
merchants?

Q. As merchants? A. No.

Q. Did you talk with anyone of these parties that you mentioned yesterday about the question of their being able to make forward contracts by reason of the conference? A. I think that was one of the subjects of discussion.

Q. Well, you say you think so. Have you any distinct recollection whether you discussed that particular thing with anyone of these parties you mentioned? A. I cannot swear to it, no.

Q. Have you discussed with any of the large shippers 4147
here who make forward contracts such as the Standard Oil Company or the Singer or United States Steel Corporation whether or not that is to their particular advantage? A. I think I probably have. I have no distinct recollection.

Q. Well? A. I remember very well a discussion I had with my brother on the subject if you would like to know about it.

Q. No, I am not at all interested in your brother. I am speaking about certain specific merchants.

MR. SPOONER: Is he a shipper? 4148
THE WITNESS: Yes, he is a shipper.

Q. I am now speaking about certain specific merchants? A. I reply that I think probably I have, but I don't remember the specific occasion.

Q. I want to correct the date of the appearance of the advertisement of the sailing of the *Macedonia*. The date of the advertisement in the paper is February 13th, 1913, scheduled to sail March 20th, under the heading Hamburg-South American Steamship Company, Hamburg Line. Will you look at that and state whether or not that is your

4149 ad? A. Well, we don't put that in the paper; the Hamburg-American Line put that in.

Q. Well, I suppose you know whether or not that is a regular advertisement? A. Yes, certainly.

Q. And you notice there it appears that the *Macedonia* is scheduled to sail on March 20th? A. Yes, I see it does. I think that it was probably between February 13th and that time that the regular service was put in. I think if you look up a later date of the paper you will find she is advertised for the 25th.

4150 Q. Well, do you know whether or not—I don't know whether I am called upon to look up any further dates—— A. I am not interested in it.

Q. Do you know whether or not it is a fact that the *Macedonia* did sail on the 25th? A. I will be glad to look it up for you. I haven't that in my head.

Q. I wish you would. Now, going back to merchants that you discussed this distinct advantage of the conference, of making forward contracts, you say you think you may have had some talk with one of those I have mentioned. Have you any recollection of it at all, and with whom, if you did?

4151 A. No.

Q. What is that? A. No.

Q. Where did you say you were stationed in 1907, or did you say? A. I think I did state a good many times.

Q. I have forgotten? A. The first of June I became a partner of Funch, Edye & Company, 1907.

Q. Where were you before then? A. In New York.

Q. In what business? A. Agent for Shewan, Tomes & Company and secretary and treasurer of the American Asiatic Steamship Company.

4152 Q. You knew during 1907 that there was more or less competition between the various lines engaged in the Brazilian trade from New York? A. I had a superficial knowledge of it, no direct connection.

Q. Among other things that you in your opinion said were advantages of the conference, that it enabled the lines to supply better terminal facilities which means that the shipper can send his goods down to the wharf when they are ready and get the bill of lading and save him in that way charges and storage. Was that statement made by you or that opinion of yours formed, rather, upon a knowledge that obtained in 1907 as to whether or not

the same things could or could not be done? A. I don't know anything about 1907. 4153

Q. Is it customary with any of these lines that you are connected with, that is, either in conference or otherwise, to issue bills of lading before the goods are actually delivered on the steamer?

MR. KIRLIN: I object to that as immaterial and irrelevant.

THE WITNESS: I will have to give two answers to that. We do not issue bills of lading before the goods are on the steamer, but we don't issue bills of lading before the goods are in our custody and on the dock. 4154

Q. Do you mean to say that you issue bills of lading when the goods are simply delivered at the dock? A. The bill of lading so states.

Q. Well, do you mean to say that you put in the bill of lading some statement with reference to the fact that they have not yet been received upon the steamer for shipment? A. I do not. I mean that the bill of lading reads "Received for shipment by such and such steamer." 4155

Q. That may be true, but the point I am trying to ascertain is whether or not the mere delivery of the commodity to the dock, then and there you would issue a bill of lading or issue a receipt for it at the dock? A. We issue a receipt for it at the dock.

Q. Well, then, under these circumstances you would not issue the bill of lading? A. Immediately we received the delivery at our dock we would issue a bill of lading.

Q. Although at that particular time there was no steamer there waiting for it? A. It might be so. 4156

Q. Do you make that a practice generally? A. Certainly.

Q. Do all the other lines in the conference do the same thing? A. I imagine so.

Q. Have you any information on the subject outside of imagination? A. I should be glad to find out for you.

Q. I am asking you? A. I can't tell you all about the practices of the other lines.

Q. Just say so if you don't know. Now, with reference to the facilities that you say inure to the benefit of the shipper, I asked you yesterday with regard to the dock

4157 space of the various lines, and as I understood you said you did not know about the Lamport & Holt Line; is that right? A. You asked me where the dock was situated and I said I did not know.

Q. Do you know whether or not they occupy as much space since 1908 as they did before? A. I don't know anything about it.

Q. But you do know about the Prince Line? A. I know where their dock is.

Q. Do you know whether they occupy as much space
4158 as they did in 1907? A. I told you that I thought they had part of a pier then and that now they have a whole pier.

Q. Do you know whether or not the Prince Line has given up half the space that it held on that pier? A. I don't know anything about it.

Q. Now, as to the disadvantages that would arise, which you testified to, if there should be no conference; among other things, you stated that it always results in deterioration of service. Do you make that statement of facts upon the conditions with reference to the service that obtained here in 1907? A. I don't know anything about 1907.

4159 Q. Then when you gave that opinion as to the disadvantages of competition you did not have in mind what obtained here in 1907? A. I did not. I stated an economic fact.

Q. You also stated it results in the weaker lines, withdrawing their sailings as much as possible in order to limit their loss, and would eventually throw each trade into the hands of the one strongest line. Did you form that opinion upon any of the weaker lines being driven out of the service, or anything happening of that nature in
4160 1907? A. I don't know anything about the Brazil trade in 1907.

Q. Then your opinion was not based having that situation in mind, was it? A. It was not; again I state an economic fact.

Q. You are referring, of course, I suppose, entirely to freight and not to passenger boats? A. Entirely; I don't know anything about passenger business.

Q. The conditions that obtained from here to the Continent of Europe have been uniformly good, have they not, as to the regularity of sailing? A. The class of the service and all that; I think that is probably the best service that is anywhere in the world.

Q. Is that through traffic under any conference arrange- 4161
ment? A. I don't know.

Q. Don't you know it is not? A. I think it is on the westward business.

Q. Is it on the eastward business? A. I think not.

Q. Is it on the westward business because they think possibly it does not violate the Federal laws, but not on the eastward business because they are afraid that it does?

MR SPOONER: You need not answer that question unless you desire.

MR. BALDWIN: He has been giving a lot of testi- 4162
mony here, let me have an opportunity.

MR. KIRLIN: You ought to reserve some of your argument for the Court, and not put it all in the record.

MR. BALDWIN: I have had an extended example before me when we had cross-examination.

MR. SPOONER: You are not obliged to answer that question if you don't want to give an opinion as to what somebody else thinks.

(Question read.) 4163

THE WITNESS: I don't know what their reasons are.

Q. Well, in any event then, you do not base your opinion as to these ruinous conditions and rates from the lack of conferences from any knowledge that you had of how the traffic eastward, the North Atlantic traffic eastward to the Continent, is carried on, or as to its regularity or quality of service? A. I don't think I had in mind the Atlantic trade at all.

Q. But you do know that possibly it is as good, if not 4164
the best service in the world? A. It is just as good westbound, you know.

Q. I suppose it is, but I am speaking now of that service over and back? A. They have the most highly developed class of ships in the whole world. That is well known to everybody.

Q. If you did not have the Atlantic trade in mind, is there any trade where these ruinous conditions obtained that you did have in mind? A. Certainly; how else could I form an opinion?

Q. Which ones were they? A. For instance, in the

4165 Asiatic trade, between the years 1902 and 1904 and 1905, the conditions were exceedingly bad. Freight was carried at practically what it cost to put it on board and take it off. At that time the lines engaged, most of the lines engaged, reduced their sailings to a minimum; we did, I know, and Messrs. Barber did. The other line, the U. S. & C. J., on the other hand, which was composed of Messrs. Royden of Liverpool and the Hamburg-American Line, maintained their sailings—and I am not sure they did not increase them—and a continuation of those conditions
4166 would have crowded us out undoubtedly, and I think would have crowded Barber out, and I had particularly that in mind when I made the statement.

Q. And that is the only one you had in mind? A. Not necessarily.

Q. What others? A. There was a very bitter fight in the Australian trade which lasted a great many years. There the service was very much disorganized during the fight.

Q. How long did that last? A. I think about ten years. I was not intimately connected with it.

4167 Q. Did it ultimately go into conference? A. Yes.

Q. Any of the lines that you were connected with go into that conference? A. Yes.

Q. During this time that you say that the sailings were reduced to a minimum in the Asiatic trade, and there was this condition that you have testified to, what about the average amount of shipments that were available for shipment during that period of time as compared with a later time? A. I think the shipments have been increasing in volume probably ever since.

Q. Isn't it a matter of fact that during this ruinous time
4168 that you have spoken of that there was a dearth of business there, not only to the United States, but to the Continent from Asiatic ports? A. I don't know anything about it.

Q. Isn't it also a fact that since that time it has been a growth, and an extensive growth, all over the world? A. I think except for the contraction in the world trade after 1907 there has been a normal world growth of trade.

Q. So that about the time that the conference agreement was finally made—the Asiatic conference agreement was finally made—that trade had started to develop in volume to considerably over what it was a year or two preceding, is that right? A. I have not the figures; I cannot tell you.

Q. During this condition you speak of in the Orient, were 4169
the rates less to the shippers at that time than they were afterwards? A. Certainly.

Q. Do you know whether or not that sailings were withdrawn during this period you speak of in the Orient to the point that it was not sufficient to handle the cargo that was offered? A. I suppose it all went forward eventually, but the sailings were delayed and they were spread over. The April boat was made to do for the May cargo as well, and it was a general demoralization.

Q. On what do you base that statement? A. My knowl- 4170
edge of the facts.

Q. Were you in the Orient at the time? A. I was here running steamers to the Orient. I presume you are talking about freight from here to the Orient?

Q. No, from the Orient here? A. I don't think I heard that in your question.

Q. You did not understand that? A. I did not.

Q. You meant only from here out? A. Yes.

Q. Now, Mr. Sparks, since we are on this subject, are you prepared to say whether or not that the boats laid 4171
over any longer during just before the Asiatic conference was formed than it has any voyage since to your knowledge? A. Certainly.

Q. How much? A. They now go on regular days and there was a sailing on both lines every two weeks.

Q. How was it in 1906? A. We mosied along and sent them pretty much whenever we felt like it. 1906? That was after the conference. I don't remember whether we had fixed sailings or not; it might have been.

Q. Did you have them in 1907? A. I don't remember. I will be very glad to look them up for you if you like. 4172

Q. On what do you base your statements made a moment ago that the sailings since conference were any more regular than they were before the conference in the Asiatic trade? A. I just told you that at the time of the competition the boats were spread out to cover as much time as possible so as to send as few sailings as possible, because there was a heavy loss on each boat. After that condition was lifted an effort was made to have fixed sailings, and we had fixed sailings off and on in the Asiatic trade: as soon as the cargo fell off we were not able to maintain them and when cargo came on we instituted regular sailings again.

4173 Q. Then it depends entirely on whether you have a sufficiency of cargo coming in that you maintain regular sailings? A. Not entirely.

Q. To a certain degree, doubtless? A. Of course——

Q. And prior to 1905 and for some little time prior there was a dearth of commodities that were seeking outward tonnage from here to the Orient, is that not so? A. That is not my recollection.

Q. Isn't it a fact that the trade condition in 1904 was very unsatisfactory? A. I don't remember that.

4174 Q. As to volume? A. I don't remember that.

Q. That was true all over the world, too, wasn't it; don't you know that? A. I do not.

Q. Would the sailings outward here be conditioned at all prior to the conference upon what the conditions were in the Orient with respect to return cargoes? A. That might have some bearing on it.

Q. So that the regularity of your sailings here might very well be affected by that condition in the Orient? A. It might be so.

4175 Q. Is it proper to say as a matter of fact it did not affect your regularity of sailings as to the east? A. Purely as an academic question, I am not prepared to say no. This does not seem to be a question of fact because I don't know about it.

Q. I am asking you if you know about it? A. I don't remember the conditions in 1904.

Q. Among the other disadvantages of which you speak from lack of conference is that it would mean, as you said, a constant fluctuation in the rates. Now, is that statement made having in view any fluctuation of rates upward

4176 in your conference in any competitive era that you know of? A. They swing up and down all the time in the competitive period.

Q. In this Brazilian trade do you know whether or not that the rates, the maximum rates, in 1907 were as high or higher at any time than the maximum rates in 1908 or 1909? A. I don't know anything about the rates in 1907.

Q. Then that disadvantage you speak of again was not based upon any knowledge you have of what obtained here in the Brazilian trade in 1907? A. It is reasonable to suppose that during competitive eras the rates were continually changed.

MR. BALDWIN: I ask to have that stricken out as 4177
not responsive.

Q. (Question read.) Yes or no? A. Why yes or no?
Q. Because I am entitled to it? A. Why can you ask for yes or no answers?
Q. I certainly can? A. You can?
Q. Yes, I can. Read the question, and I will leave it to your own counsel that you must answer it.

MR. SPOONER: I ask to have the question read.
(The stenographer reads the two previous ques- 4178
tions and answers as follows: "Q. In this Brazilian trade do you know whether or not that the rates, the maximum rates, in 1907 were as high or higher at any time than the maximum rates, in 1908 or 1909? A. I don't know anything about the rates in 1907. Q. Then that disadvantage you speak of again was not based upon any knowledge you have of what obtained here in the Brazilian trade in 1907? A. It is reasonable to suppose that during competitive eras that the rates were continually 4179
changed.")
MR. BALDWIN: The disadvantage of fluctuations of rates. I am going to take each one of these questions and eliminate, as I have a right to. (Last question read.)
MR. SPOONER: He has told you a dozen times he doesn't know anything about 1907.
MR. BALDWIN: I assume when he says he doesn't know anything about 1907, if I am asking for 1907, he can answer that question. I have the right to 4180
ask him in forming your opinion then you did not include any knowledge of conditions in 1907 in arriving at that opinion you have given here.
THE WITNESS: If I could have all of my answers made for me I should be delighted.

Q. Or based upon any other period of time where there was competition in the Brazilian trade? A. There was no other time as far as I know.
Q. Then it was not based upon any such period? A. No.
Q. Then I will put a general question to solve this fric-

4181 tion somewhat. No part of your opinion as to the advantages of conference or the disadvantages of competition is based upon any knowledge you have as to what obtained here in the Brazilian trade during the competitive period in 19.7? A. No, sir.

Q. You were asked by Senator Spooner what effect the conference understanding had upon the reasonableness or unreasonableness of rates, and among other things you said there is no opportunity among the regular lines to raise their rates, the moment they do so they create com-
4182 petition for business? A. Didn't I say to an unreasonable level?

Q. I have stated the question and I am reading precisely as you put it? A. I think the stenographer has made a mistake then. I have to protest against the reporting of that evidence.

Q. Now, Mr. Sparks, I take it then that from that answer the purpose of the conference is to fix the rates upon the commodities as much as they will bear and at the same time will not invite this outside competition, is that right?
4183 A. Yes, their object is to fix the rates so that it will show them a fair profit for the service rendered, and still not encourage tramps to interfere with their business.

Q. My question was whether it was not—the rates charged—embraced also the fact that it should be established as much as the trade would bear and yet at the same time not invite outside competition? A. I don't think that is a natural inference.

Q. You don't think so? A. No.

Q. Did you hear the testimony of Mr. Sickel here of the Hamburg-American Line the other day? A. I did not.
4184

Q. He said among other things that the purpose was to fix rates upon commodities as much as the traffic would bear and at the same time not invite outside competition, and would you say that he was correct in that or not? A. If that is what he said he was entirely correct; he may have had some specific commodity in mind.

Q. I didn't ask anything about specific commodity, and I read from his testimony before the Committee of the House and put the question to him myself and he made that answer, so in view of that would you now say that that is not one of the purposes of the conference?

MR. SPOONER: That is Sickel's opinion and you 4185
are not obliged to agree with it unless you do.
(Question read.)

A. I still say that is not the natural inference.

Q. Would you say that it was not one of the purposes; he has testified to a purpose, he testified, Mr. Sparks, frankly that that was one of the purposes in their management of conference business, and he did not give it as an opinion. Now, I read that to you and ask you in view of the fact that he thus said, that it was a part of their pur- 4186
pose, do you say that is true or not true? A. Mr. Sickel's opinion does not influence me at all.

Q. Have you been consulted by the principals with reference to what their purpose was in fixing rates? A. How do you mean consulted?

Q. As to what their method was in fixing rates? A. No.

Q. Now, with reference to——

MR. KIRLIN: We object to the characterization of the answer of Mr. Sickel's, especially the statement that he testified that it was the purpose of the con- 4187
ference to charge rates as high as the traffic would bear without inviting competition. He testified merely not to the purpose, but to the practice, the word "purpose" was Mr. Baldwin's word and not the witness' word.

MR. BALDWIN: In answer to that objection I would refer him to page 1565 of the record of testimony of Mr. Sickel's where the question and answer was put which I say is substantially as I put the question to Mr. Sparks.

4188

THE WITNESS: May I ask here that that testimony of yesterday, which is obviously incorrect of mine, be changed?

MR. BALDWIN: Whatever you said yesterday and it is incorrect we will attend to that.

Q. Is it not a part of the purpose of the conference to fix the rates on coffee upon the very highest level? A. I don't know anything about coffee, but I think it is fixed especially in the agreement.

Q. Then, so far as you know is the purpose of the con-

4189 ference in fixing the rates any different on coffee than it is on any other commodity? A. It apparently is, because they so specify.

Q. They specify that rates on other commodities are to be less than the coffee—I mean the ratio of the rate? A. I do not quite understand your question.

(Question read.)

A. I don't think one has any bearing on the other at all.

Q. I was asking you about the procedure or purpose of
4190 the conference; you know whether or not there has been any agreement or understanding by which the rates on other commodities were not to be fixed at the highest possible level? A. I don't think there was any agreement that it was to be so fixed.

Q. I didn't ask you about the purpose; I asked you whether you knew that was or was not? A. What?

Q. I will read to you from the testimony of Mr. Sickel on page 1565 of the record: "Q. Then your purpose is to fix a rate where you will not be met by that competition, is
4191 that the idea? A. We endeavor to do so.

"Q. And you endeavor then to fix a rate that will be as much as the traffic will bear and at the same time will not invite the incursions of the tramp? A. We do." Now, having that statement in mind are you prepared to say it is not also the purpose of the conference to fix the rates at the highest possible level? A. That is not my idea or understanding of the purpose of the conference.

Q. Mr. Sickel is the resident director here, is he not, of your principal? A. Vice-director of one of the lines.

4192 Q. You were asked by Senator Spooner yesterday whether the conference involved better service to the smaller ports than would otherwise be the case, and your answer was that a pooling agreement undoubtedly serves the purpose of making a better service to-day at the ports because the ship owner will not go to a port for a small amount of cargo and so forth. Now, the pooling agreement which was originally entered into here was abandoned in 1909, wasn't it? A. Yes.

Q. Now, has the conference since that time in any way brought about better service to the smaller ports because of conference? A. I think because the pooling agreement

was abandoned probably some of the smaller ports have not been as well served. 4193

Q. Then in answer to the Senator's question your idea was that where there was a pooling agreement and a division of profit or losses, as the case may be, that it would give better service to the smaller ports? A. That is what I said.

Q. But a conference without a pooling agreement would not benefit it in any way, would it? A. I don't think so.

Q. What advantage is there of having any service to the small ports at all, Mr. Sparks? A. There is a considerable advantage to the shipper to those ports, and it increases the total volume of America's export trade. 4194

Q. When you say small ports, you mean ports other than Rio, Santos, Victoria and Pernambuco? A. I mean the ports that take a small amount of cargo.

Q. Why wouldn't the same advantage be to the shippers to have the conference lines serve the smaller or less conspicuous ports in this country? A. I don't think I quite understand what you mean.

Q. (Question read.) A. I suppose it would be more advantageous to shippers if the boats could stop at every port right along to the coast, but it would materially increase the expense of service, and inasmuch as most of the ports are only distributing points and not consuming points, there seems to be no real necessity for it. 4195

Q. Would that apply to certain ports as New Orleans and the Gulf ports? A. I think probably that it would also serve more as gateways and distributing points than as consuming points.

Q. Wouldn't it be to the advantage of the shipper who had the commodity, either to be received from Brazil or to send to Brazil, to have it come to him if he were contiguous to the Gulf ports, to have it come by one of the gulf ports rather than come clear through to New York and transshipped to him? A. Yes, if the service at that port did not so increase the rate as to make it higher than the through rates, or to New York. 4196

Q. In order to get a given commodity, we will say from Brazil to the interior merchant and, we will say, particularly contiguous to the Gulf ports, it is to his interest to have the commodity laid down as near his door as pos-

4197 sible, is it not? A. That is a self-evident question, Mr. Baldwin.

Q. Yes, and if a shipper has a commodity that he wants to ship to Brazil and he is contiguous to the Gulf ports, it is likewise to his interest to have facilities from one of the Gulf ports rather than send it by way of New York? A. I should think so.

Q. So then, if it is to the advantage of the shippers that the conference should serve these smaller ports in Brazil why would it not be to the advantage of the shipper con-
4198 tiguous to the Gulf ports at least, to have the conference serve them at the Gulf ports? A. I have no doubt they would so serve them if there was sufficient demand for it.

Q. Don't you know that there is a considerable amount of merchandise that goes to Brazil and comes from Brazil by way of New York? A. I don't understand the question.

MR. SPOONER: You mean from the south?

MR. BALDWIN: Both ways.

Q. (Question read.) A. Where to; where from?

4199 Q. Points inland and particularly in the south? A. No; I am not acquainted with that. The point of origin is not always known to us; in fact not often known to us.

Q. Assuming for the purpose of the question that there are or that there is a considerable amount of trade that originates in the south and the southwest that goes to Brazil by way of New York, wouldn't it be very much to their advantage to be served directly from the Gulf ports? A. I think there is no such demand; I think your supposition is incorrect.

4200 Q. Do you mean to say that there is not much traffic from those ports to Brazil by way of New York, I mean local? A. I don't think there is a large traffic.

Q. The Lloyd Brazileiro have a service from New York to ports in South Brazil and have for a long time, have they not? A. Ports where?

Q. I did not put the question right. It has a service from Rio to all South Brazil ports, has it not? A. I believe so.

Q. And has for a number of years? A. Coastwise lines which confine the business to their own flag.

Q. Anyhow they have it? A. I think so.

Q. Doesn't it serve more of the smaller ports than any of your lines do? A. Not that I know of.

Q. Have you any knowledge on that subject at all? A. 4201
I don't know where they call, but I imagine they call at all ports in the south.

Q. Isn't it a part of the purpose of these conference lines to so conduct the service as to develop trade? A. Certainly.

Q. Don't you think that there would be a fair chance of developing the trade in the south and southwest with the Brazilian and South American ports if they had a service from New Orleans or some other of the Gulf ports to Brazil? A. I don't think that the trade there would support 4202
the service.

Q. I am not asking you whether it would; I am just asking whether you don't think there would be a fair chance to develop that trade if you had such a service? A. That is purely speculative.

Q. We have had a number of witnesses who have testified here that the purpose among other things in this conference is to develop trade. Now, I am asking, assuming that to be true, don't you think that in as populous and fruitful and resourceful a country as the south and southwest that 4203
the trade might well be developed if you did have some service to it from the Gulf ports to Brazil? A. Yes, but whether the service could be operated at cost is a very grave question in my mind.

Q. It has never been given that chance yet by the conference, has it? A. They serve the south, I think, Lamport & Holt and the Prince Line from Brazil.

Q. But not from New Orleans or any of the Gulf ports to Brazil? A. They haven't got sufficient money to waste to do it.

Q. And that is the reason they don't do it? A. Yes. 4204

Q. And they haven't got sufficient money to develop the trade? A. They haven't got sufficient money.

Q. So their desire to develop the trade is based entirely upon the initial cost to them regardless of what the return would finally be? A. I don't know what you mean by initial cost.

Q. You just said a moment ago—(Question read.) Are you simply stating your opinion about that, or do you know whether that consideration has not occurred to the principals or the conferee principals? A. They have no doubt given the subject consideration several times.

4205 Q. I submit, Mr. Sparks, that that is not responsive. I am asking you if you know, not what you doubt about. If you don't know just say so? A. I don't recall any conference, personal conference, about it.

Q. Do you know whether or not that that consideration has entered into the plans and conferences of your principals? A. I am not quite sure that if they considered it that was the reason they did not do it.

Q. That is not responsive; I am asking you if you know? A. If I know what?

4206 Q. (Question read.) You either know or you don't know.

THE COMMISSIONER: This is in regard to your personal knowledge?

THE WITNESS: No, it is not.

Q. Do you know whether or not the conference has ever considered or passed upon the question of whether one line out of the conference could serve those ports? A. Do you mean serve regularly?

Q. Yes? A. No, I don't know.

4207 Q. Do you know whether or not there has been any conference or consultation as to whether they should be served at all by one line? A. I do not.

Q. Then, so far as your own personal knowledge goes you don't know whether the principals have ever considered this question of whether it would be advantageous or not, from a monetary standpoint to serve to and from the Gulf ports to Brazil? A. No, I only know that they are in the Brazil business, and if they regarded the business as capable of profitable development they would have gone

4208 into it.

Q. You draw that inference? A. I do.

Q. But you have no knowledge on the subject? A. No.

Q. Of how much or how little? A. I have not.

Q. Now, Mr. Sparks, with reference to the methods of the tramp steamers, if I understood you correctly, your idea is that the owner looks about to find out where he can get the best market? A. Correct.

Q. And then before he commits himself to any fixed rate he looks around to see whether or not he can get either a return voyage or where would be the nearest point from the final port of destination that he could get a voyage to

some other port of the world, is that right? A. And which would pay him the best. 4209

Q. And which would pay him the best? A. Correct.

Q. Assuming then that an offer would be made to a tramp here in New York for Rio, before the tramp would accept that offer he would ascertain whether or not there was any possible opportunity of getting a cargo from Rio to somewhere, and if he could not, then the nearest port to Rio that he could get a cargo, is that right? A. The best business that he can get would be by shifting from Rio, not necessarily to the nearest point. 4210

Q. Then, in fixing his rate, say from New York to Rio, assuming that his next port where he could get business from to some other port, say is Buenos Ayres, or some point in the Argentines, he would fix his rate from New York to Rio having in mind the cost of taking his boat in ballast from Rio to the point that he could get a cargo, is that right? A. He would, of course, but hold her in comparison.

Q. He would either accept or reject the rate provided that there was enough inducement for him considering the fact that he would have to take his boat to some place in ballast? A. Yes, he would; but he would do it in comparison with other business offering, perhaps not from New York and not from Rio perhaps; perhaps from Portland to Avonmouth with grain. 4211

Q. Whatever comparison he might have in mind accepting an offer in New York he would be influenced then by the shortest trip that he would necessarily have to make in ballast to get a cargo from some port to some port, is that right? A. And the same would be true for other comparisons where he was figuring the freight against it to some other part of the world; he would also figure there the possibility or certainty of a ballast voyage. 4212

Q. Isn't the expense of a ballast voyage, we will say, from Rio to, say, New Orleans or from Rio to Buenos Ayres, in comparing the revenue to the steamer always a very material factor; isn't it in his calculation and perhaps a limited tonnage offering to the particular market? A. I am afraid I do not understand your question.

Q. Then the extent of the ballast voyage, we will say, from Rio to New Orleans, or from Rio to Buenos Ayres, in comparing the revenue to the steamer is always a very

4213 material factor in his calculation and operates in limiting the tonnage offering to this particular market? A. I don't think it does limit tonnage at all, because after all it is only a comparison with freight serving in other ports, and there are lots of conference boats to go to Rio. It is only a question of profit.

Q. And it does not affect the limit of tonnage? A. No more, say, than a voyage in some other direction.

Q. The regular line of steamers, of course, operating to the Brazilian ports, or to any port for that matter, haven't
4214 got that situation to confront them, have they? They go on regular sailings and from one port back to a port regardless of whether or not full cargo is there? A. They are forced to return to their original point in order to continue their sailings, and in that way they are taken at a disadvantage as compared with the tramps.

Q. You mean to say that you cannot go from place to place, then? A. No, they have their definite obligations at the other end which they have to fulfill.

Q. They are also not confronted with the probability of going to any particular port or upon any ballast? A.
4215 Their probability is that they may have to return to their orignal loading port in ballast.

Q. The number of times that these conference lines have come back in ballast from Brazil to New York has been very limited, has it not? A. I can only testify to our own line. A great many of our boats come back either in ballast or practically in ballast.

Q. Now, out of an average, we will say of 20 sailings in a year, out of 100 sailings in five years, how many have there been where you came back in ballast? A. I testi-
4216 fied yesterday from a statement you showed me submitted by one of the gentlemen connected with our concern, and out of 95 steamers five came back in ballast, 29 practically in ballast and no steamer had a full cargo, that the average full steamers was 44% and the average empty steamers 55%.

Q. I am simply asking you about those that came back in ballast, entirely in ballast? A. I presumed you wanted the facts.

Q. I want the facts of the actual number in ballast; that had nothing to do with those in ballast? A. You asked me about the condition of 100 steamers; there were 95.

Q. I didn't ask you how many out of 100 came back in 4217
ballast? A. If you will read the question you will see that you did refer to 100 steamers.

Q. I asked you how many of them came back in ballast, not partly full. (Question read.) A. I have answered it.

Q. How many, five? A. I have answered it. I have given you a full answer to it.

(Answer of the witness read as follows: "I testified yesterday from a statement you showed me submitted by one of the gentlemen connected with our concern, and out of 95 steamers five came back 4218
in ballast, 29 practically in ballast and no steamer had a full cargo, that the average of full steamers was 44% and the average of empty steamers 55%.")

MR. BALDWIN: I ask to have stricken out all after the number that came back in ballast.

Q. With reference to the European steamers that are engaged in the Brazilian trade, they are also engaged, those same steamers, engaged in the River Plate trade, are they not? A. I don't know about the European trade. 4219
I think some of the steamers also go to the Plate, some of the Brazil steamers.

Q. Isn't it your idea that most of them do? A. I have no idea on the subject.

Recess taken until three o'clock P. M.

AFTERNOON SESSION.

THOMAS A. SPARKS, recalled.

RE-DIRECT EXAMINATION continued by Mr. Baldwin: 4220

Q. Now, Mr. Sparks, is it a fact that when tramps are chartered that a fixed number of days are arranged for for the sailing as a rule in the charter party? A. Yes; as a rule it depends on the form of charter party, but they usually give a fixed number of days for loading and discharging.

Q. And in the event that a fixed number of days in the charter party are not complied with, I mean either in the loading or delivery, why there is some forfeiture clause? A. There is a demurrage clause.

Q. It is also true, is it not, that when they are chartered,

4221 say, in advance of the day of the arrival at the port for which they are chartered, that the charter party forfeits if she does not get there on time? A. As a rule there is what is called a cancelling date, and if she does not arrive and report ready for cargo at that date the charterer has the option of maintaining or cancelling the charter.

Q. That is generally in the charter parties, is it not? A. Most all of them.

Q. Under the Exhibit 1 attached to the petition, with reference to outward sailings, there is a provision that
4222 each one of these lines are to have 24 sailings per annum. Now, do you know whether or not the Lloyd Brazileiro maintained more than 24 sailings per annum and has been? A. I haven't the list before me now, but I think they have had more than 24.

Q. And is it true that it averages more than 24 and has been since 1908? A. I have not the figures, but I think so.

Q. Am I right in my recollection that you testified here yesterday with reference to the sailings of the Hamburg-American Line from Brazilian ports to New York, that up
4223 until very recently they have been irregular? A. I testified that from New York to Brazil they had been irregular. I don't know how they are from Brazil to New York. I think they are still irregular.

Q. You think that they have been and are now irregular from both ports? A. I think so on account of the long delays and the fact that sometimes they do not get any cargo at all.

Q. The delays sometimes are affected down there by the condition of the weather? A. I don't know.

Q. Well, then, if it be true that for any reason whatso-
4224 ever the Hamburg-American Lines have been irregularly sailing from coffee ports then the coffee shippers have no particular assurance of regularity of their shipments, have they? A. They do not ship entirely by the German Line, you know; they ship by any other boat that is in port.

Q. I understood you to say that you had no knowledge about the regularity of any other lines from Brazil here? A. I think the Lamport & Holt Line keeps their boats very regularly moving. I don't know about the Prince Line.

Q. And upon what do you base your thought that the Lamport & Holt Line has been maintaining regular service? A. The regularity with which the same boats leave New York again.

Q. How long have you noticed that same regularity with 4225
reference to the Lamport & Holt Line in leaving New York? A. For several years.

Q. Is it your idea or your information that the Lamport & Holt Line was regularly sailing from New York in 1908, 1909 and 1910? A. Yes, I think so.

Q. The Lamport & Holt Line boats are the only ones that maintain—and since the conference—that maintain a passenger service? A. Yes.

Q. And this regularity of theirs, then, is due to the fact that they are passenger boats, isn't it? A. I don't know 4226
what it is due to. I only know it is a fact.

Q. But your understanding is that the Prince Line have not maintained a regular service, a regularity of sailings? A. I don't know from the other end; they have been fairly regular from this end.

Q. Well, now, when you say that the Lamport & Holt have been regular in their sailings from this port, do you refer to all the Lamport & Holt boats, passenger as well as freight? A. Yes, I refer to their Brazil service.

Q. And you mean by that to include all of their boats? 4227
A. Yes.

Q. Is it not a fact, Mr. Sparks, that high class cargo is carried from Europe to Brazilian ports almost exclusively in passenger steamers at the average of from 15 to 18 knots per hour? A. I think not.

Q. But with the exception of the very old boats that have been put on by the Lamport & Holt Line, it is not true that the boats from the Continent and the United Kingdom for Brazil—they have faster boats than those boats that go from here? A. I don't know anything about the speed of the European boats. 4228

Q. In answer to a question of Mr. Kirlin yesterday, Mr. Sparks, which was in substance that the conference lines here would be justified in charging a larger rate from here to Brazil, a higher rate than you, meaning, I suppose, the conference boats, or any of them, from the Continent to Brazil for the reasons you have stated, and your answer was, "I think the principal would be entirely justified. The only reason they do not is the matter of policy and the importunities of their New York agents who are trying to earn their bread and butter, and to do so trying to increase the trade from New York to Brazil." Now, is

4229 there any special reason why that if the agents have a desire to increase the trade from New York to Brazil that they should not also be interested in having their principals put on a service from other ports than New York, for instance, New Orleans to Brazil, for the purpose of developing the trade? A. It would not interest my firm, because we have no office in New Orleans.

Q. When you testify then you speak entirely from an agent's standpoint? A. Yes, I said so.

Q. Then it would be more to your interest as agents not
4230 to have the line, your line, establish a service from New Orleans or any of those ports to Brazil? A. We should not have anything to say about it, one way or the other.

Q. It would not be to your interest, would it? A. No.

Q. Now, Mr. Kirlin further asked you this question: "Therefore, as I repeat, they have their principals make the rates as low as they can? A. That is the idea exactly." Now, that is not the idea with fixing the rates for New York, is it? A. But the agents have nothing to do with that.

Q. The question of Mr. Kirlin was that the agents, as
4231 I understand his question, is to have their principals make the rates as low as they can? A. That is right.

Q. To which you answered "That is the idea exactly"? A. That is the idea exactly.

Q. Well, now, it is part of the endeavor of the agents to have their principals make the rate on coffee as low as possible? A. We have nothing whatever to do with that.

Q. Then you mean other rates than coffee, is that the idea? A. Yes. I was talking about the outward rates from New York.

4232 Q. And not the return rates at all? A. No, sir.

Q. Now, isn't it as a matter of fact the practice of the principals and their intent to make all the rates just as high as they possibly can? A. I don't think so.

Q. I have before me here the record of the hearing before the Committee on the Merchant Marine and Fisheries in the House of Representatives, and I am now referring to the testimony of Mr. Sickel, one of the directors of your line.

MR. KIRLIN: Vice-director in charge of traffic.

Q. He was asked by Mr. Hardy:

"As a matter of fact, if you went too high on your 4233
bulk freights, the Steel Trust and the Harvester Trust, the Standard Oil Co., and all those big institutions would simply go out and even build themselves vessels; but as long as you stay within reason does the tramp situation cut much figure in the North Atlantic trade?

"MR. SICKEL: He regulates us because we cannot put our rates higher than the tramp, otherwise the tramp will get it.

"MR. HARDY: Is it not that you dare not 'jump 4234
over the moon,' but you can go pretty high?

"MR. SICKEL: We go as high as we possibly can."

Now, in view of that statement made by Mr. Sickel, do you still say the agents here have their principals fix the lowest rates that they can? A. Certainly.

Q. Do the principals in actual practice make that exertion by the agents, or do they as a matter of fact fix the rates as high as they can? A. They very frequently conform to our recommendations. You have all of our cables and the books are full of them. 4235

Q. And very frequently they do not? A. Sometimes they do not.

Q. Do you think Mr. Sickel does not know what he is talking about when he makes the statement that they go as high as they possibly can in fixing rates? A. I think that statement of Mr. Sickel's cannot be taken without the context.

Q. I read the context to you? A. I think Mr. Sickel meant as high as they can within reason.

Q. Aren't your instructions by cable, as a rule, to the 4236
effect to make an offer and such an offer as you think that you are able to get; in other words, to get just as high as you possibly can? A. I don't think we ever get any open instructions like that in the Brazil trade.

Q. Aren't you sometimes instructed in response to your enquiries to the conference in London with respect to giving a certain rate to a shipper, that you make an offer of so much, but go below it if necessary, but get as much as you can? A. I don't remember any such cable.

Q. You would not say there were no such cables passed between the conference abroad and the conference here? A. I can only say I don't remember.

4237 Q. Now, you were asked by Mr. Kirlin whether or not the additional expense of operating a passenger ship—you were speaking of ships from Europe to the Brazils—whether it was not offset by the passenger fares, to which you made answer: "Very much more than offset." And you testified here during the course of this examination that you didn't know anything about the passenger rates from Europe? A. No, but I am blessed with some intelligence and I know that the passenger lines have a better paying business to New York from a financial point of
4238 view than purely freight lines.

Q. But you know nothing about the facts or the data upon which that business is operated from Europe to Brazil or return, is that it? A. I did not.

Q. This is an assumption, then, on your part? A. No, I don't say so.

Q. You don't know the actual facts and you are assuming that? A. Mr. Kirlin's questions did not apply particularly I think to boats in the Brazil trade.

Q. You were asked this question by Mr. Kirlin: "Q. I think you said in answer to Mr. Baldwin yesterday that the
4239 most of the steamers you believed—that were trading from England and the Continent to Brazil—were largely passenger steamers, and that the cost of operating them was perhaps greater than the cost of operating the majority of steamers that go from here? A. I said to Mr. Baldwin, as I must say to you, that I know very little about the European steamers, but I have been told since yesterday——" Then there was a stop, Mr. Baldwin put in an objection, "The witness: It is only a question of facts, Mr. Baldwin; I can get it very easily." "Q. Whatever the
4240 proportions may be, isn't the additional expenses of operating a passenger ship offset by the passenger fares? A. Very much more than offset. Q. In other words, the European Lines had the additional profit which comes from the carriage of passengers, which the lines from here do not have? A. Yes, that is correct." That statement which you made in answer to Mr. Kirlin's question, then as far as actual knowledge is concerned was made without any actual knowledge on your part, but what you assumed to be the facts? A. General assumption, yes.

Q. Now, the Hamburg Lines stopped carrying passengers, did they not? A. They did.

Q. And took up the carrying of some other commodity,

Q. For what purpose did they give up the passenger and take the gasoline? A. Because the gasoline pays better, I believe. 4241

Q. And the same class of ships that you had been operating before? A. Yes. Most of those ships were not passenger ships, they were freight ships with very limited passenger accommodations, which is quite different.

Q. Did you not carry any gasoline on any—does that apply to all the Hamburg ships in this trade on which you carry gasoline? A. Yes, in the trade at that time, certainly. 4242

Q. They are still carrying gasoline? A. Yes.

Q. And still not carrying passengers? A. Yes.

Q. Now then, when was it that the Hamburg-American Line ceased to carry passengers? A. I don't remember.

Q. Do you remember the year? A. No; several years ago.

Q. And they continued to operate the same boats in the service for a number of years, part of them, that they did during the time they were carrying passengers? A. I think so. They have changed them since, but I don't know how soon after they changed them. 4243

Q. Mr. Burlingham called your attention to Exhibit 158, which is the minimum tariff rate from the United Kingdom and Continental ports, and so forth, to Brazil, and more particularly your attention to page 2 and the first paragraph, which among other things, provides that "all rates from the United Kingdom to be in shillings per ton of forty cubic feet, or 2,240 pounds, gross, whichever yields more freight, with 10 per cent. primage." You remember that, don't you? A. I do.

Q. Now, isn't it a fact that the primage has all been given back to the European shippers in the way of rebates? A. I don't know. 4244

Q. Isn't that your general understanding? A. I don't know.

Q. You wouldn't say it is not done would you? A. I would not.

Q. You do know, don't you, that a rebate system was established? A. I do not.

Q. From Brazil? A. I do not.

Q. And after this conference agreement was made? A. I do not.

4245 Q. You know in a general way? A. I have seen circulars that were issued to that effect, shown me by the District Attorney.

Q. Didn't you know anything about rebates at all before you had any conversation with the District Attorney? A. Not from Brazil.

Q. European ports? A. Neither to Europe nor to New York.

Q. Do you know whether there was any rebate system from Europe to Brazilian ports? A. No.

4246 Q. Paragraph 6 here with reference to the homeward sailings, provides in Exhibit 1, a rebate system to be established on the same scale as that presently in force for Hamburg. Under the law shippers will be required to confine their shipments, and so forth to the United States or to the European ports mentioned to the steamers of the conference lines. You remember that, don't you in the Petition? A. Yes, I have seen it.

Q. Hadn't you ever seen that conference agreement before you had that conference with the District Attorney?

4247 A. My recollection is it was at the request of the District Attorney that we got that agreement and we had some considerable trouble in getting it from the other side.

Q. Is that the first you knew anything about it? A. I think that was the first time I had seen it.

Q. Never even heard it discussed among the conferees or the agents of the conferees? A. I don't think I had ever seen it.

Q. Did you get it from the other side, or did you get it from your own office here, I mean the office of the Ham-

4248 burg-American Line? A. The Hamburg-American Line got it from the other side for me to hand to Mr. Knapp, I think it was, at that time. That is the best of my recollection.

Q. Have you ever seen a European conference agreement? A. I never have.

Q. Mr. Sparks, I show you the cable book which has been referred to here in evidence a good many times, with copies of the cables and more particularly to a cable addressed to Braconfer, London, which is the conference address, is it not, in London? A. Yes.

Q. May 13, 1909—— A. That is the address of the New York conference secretary.

Q. Which reads as follows: "Are quoted European rates net or subject rebate if latter quote net rates." Do you know anything about that cablegram? A. I suppose I saw it at the time. I don't remember it. 4249

Q. Then if you did see it at the time you must have known that there were some questions left for rebate somewhere in this trade, wouldn't you? A. I don't know what the reply is.

Q. I will read it, on page 149 of the same book, the reply is "Braconfer, New York. May 14th. European rates are with primage with rebate. You can quote rates." A. I have no doubt I knew of it at the time. 4250

Q. Now, what is your interpretation of that? A. That they charged the shippers some percentage of primage, evidently 10 per cent., from Exhibit 158, and that they give that 10 per cent. back to the shippers at some future time in the form of a refund.

Q. Then, in view of these two cablegrams that I have called your attention to do you still think that you did not know anything about rebates? A. I had forgotten those telegrams; in fact I don't recall them now that you have shown them to me. 4251

Q. You must have had some knowledge that there were rebates allowed? A. I evidently had, but it did not make much impression on me.

Q. Well, the result of that is, is it not, Mr. Sparks, that the European shippers get the benefit of a refund in the way of rebate for this primage, which the American shippers do not get at all, isn't that it? A. The American shipper as far as our firm is concerned don't pay the primage in the first instance and they are therefore a great deal better off. 4252

Q. How about the Lamport & Holt? A. I don't know what the Lamport & Holt do.

Q. A great many of them are shipped over the Lamport & Holt Line, aren't they? A. Yes.

Q. In that case unless Lamport & Holt voluntarily pays it back the shippers that ship over that line are in a little worse position than the European shippers? A. I have already told you I do not know to what extent Lamport & Holt collect that primage; they have the right to collect it; whether they do or not I don't know anything about it.

Q. Assuming that they do, for the sake of argument,

4253 then the American shipper would be in a little worse plight than the European? A. I am informed that the passenger steamers on the other side also charge a premium, two and six to five shillings per ton. I have no personal knowledge of it, but I am so informed.

MR. BALDWIN: I did not ask for that. I ask to have it stricken out.

Q. You know that in these formal agreements which have been offered here in this suit, the one with Singer and a
4254 number of others, there is a direct provision that Lamport & Holt collect 10 per cent. primage, don't you? A. Yes, but I think it is in every case optional with the Lamport & Holt Line.

Q. Let's see where it is optional. (After examination of papers.) We find in the ones that we have here on the question of options you are right. Now, referring back again to the line of questions that I propounded, whether you did not have instructions from the conference in London to the conference here where they authorized you to
4255 quote a rate to get more or less, you remember that, don't you? A. To get as much as possible you said.

Q. And I understood you to say that you had no recollection of such cablegram, am I right about that? A. Quite right.

Q. Now, here is a cablegram dated August 6th, 1908, to the London conference, which reads as follows: "What rate may we quote 350 tons cement f. f. a. Rio, prompt shipment, also 6,000 tons future. Please answer today." And following it a cablegram to the New York conference
4256 which reads as follows: "350 tons cement Rio f. f. a. quote equivalent 16 shillings, reduce to 15 shillings for 6,000 tons if necessary secure." Now, in view of that cablegram you say that you did not get instructions from the line to get practically as much as you could? A. I do not call that at all instructions to get as much as possible.

Q. You do not? A. I do not.

Q. Well, it is instructions to you—they gave you instructions then that you should quote a rate and if you could not get it then to go lower? A. As I understood your reading of that cable, that we were to quote 16 shillings for 350 tons or 15 shillings for 6,000; whether I misunderstood you, but that seemed very plain.

Q. Reduce to 15 shillings for 6,000 tons? A. There is no 4257
question of getting as much as possible there.

Q. Perhaps I did not frame my question quite accurately there, but this section of the cablegram that I am calling your attention to does it refresh your recollection as to whether you did not as a matter of fact receive instructions at least at times to get as much as possible? A. Yes, I still do not recall any.

Q. Here is a cablegram dated September 19th, 1908, to New York conference, "Tramway Company," which I understand is the title of it? A. Yes, it is an abbreviation. 4258

Q. "Authorize you to contract best possible terms"? A. Yes.

Q. In that instance at least it is authority to you to make the best rate possible, isn't it? A. Yes, the best rate possible; not as much as possible, but the best rate possible.

Q. What is the difference? A. A very large difference.

Q. I cannot see it; perhaps you have a way of judging things that the ordinary man hasn't. Here is another cablegram. Now, I read to you another cablegram addressed to the New York conference under date of September 25th, 1908: "Calcium carbide," that is also a title, isn't it? A. That is a commodity. 4259

Q. It is a title for the purpose of referring to the subject matter? A. Correct.

Q. "Calcium carbide 20 cents in case of need accept but try for higher rates." Do you still think that that is not an authority to you to get the best possible rate? A. Yes, I think it is.

Q. You think that is? A. Yes.

Q. So that is at least one instance where there were cable instructions for you to get the best possible rate? A. Yes, a specific instance of five years ago which I cannot very well be blamed for forgetting. 4260

Q. I am not blaming you? A. I am blaming myself for having forgotten anything.

Q. Now, another cablegram from London to the New York conference dated October 8th, 1908, "Calcium Carbide" again: "Will accept 17½ if you cannot do better"; that means possibly that you made an effort to get the highest rate but that was the best you could get, 17½, is that it? A. Evidently we were trading on a declining market.

4261 Q. The market was declining then, was it, in 1908? A. I should judge so; very small carryings and very small earnings is my recollection of 1908.

MR. SPOONER: That was the year after 1907, was it?

THE WITNESS: I believe so, yes.

Q. Here is what purports to be a cable to the New York office from London dated November 21, 1908. That to which it is a response I have not before me, but it reads as
4262 follows: "Singer if better impossible agree 15 cents." Does that mean if better impossible—does that mean if you cannot get a better rate then agree to 15 cents? A. Yes.

Q. They are instructions likewise for you to get the highest possible rate, isn't that the effect? A. I should say it is more to avoid taking a ruinous rate; that sounds like a despairing cry to me.

Q. Whether a despairing cry or not it is to get the best possible rate, isn't it? A. Yes.

Q. There are lots of despairing cries it seems to me.
4263 Now, cablegram from London to the New York conference under date of November 10th, 1909: "Referring to minutes 332: Union Carbide Company offer contract all shipments 1910 Cabedello, Maceio 17c, Victoria 20c, Pernambuco, Bahia, Rio de Janeiro, 15c, all f. f. a. Santos 15c, Lloyds rates," and on the 11th an answer—no, this one I just read is from the New York conference to London? A. Evidently.

Q. The answer of the 11th reads as follows: "Union Carbide Company agree if better impossible." A. It again sounds like a despairing cry, Mr. Baldwin.
4264 Q. Whether despairing or not, or how it sounds, you interpret that to mean authority to get the best possible rate? A. To get a better rate than that quoted if possible.

Q. The best possible rate likewise? A. Certainly.

Q. What was the policy of fixing the rate on case oil? A. The policy has been very different from time to time.

Q. Do you have authority to vary the rates up and down? A. We did at one time.

Q. Up to what time? A. I don't remember the date, but there was a time when competition for cargo was very keen and the Lloyd Brazileiro were always just underquoting us and as long as we had the fixing of rates

they knew what that rate was and took every parcel that 4265
came along.

Q. How did they know exactly what that rate was? A. From merchants.

Q. Do you assume they knew it or did you know it to be correct? A. I am quite sure they knew it; that at least I can be certain of.

Q. This policy, your right to vary the rates up and down, was changed about two years ago, wasn't it? A. I don't remember.

Q. Well, the Lloyd Brazileiro quoting a rate which you 4266
saw was somewhat under your own, would you then meet their rate or would you go below their rate to get that case oil business? A. I don't remember how it worked out in practice, but we quoted I believe at that time about 20c and then if a shipper offered us 18c we accepted it.

Q. When the shipper offered you 20c, we will say, would that be the rate the Lloyd quoted? A. Presumably it would be either what the Lloyd was quoting or what he thought he could get from the Lloyd.

Q. You think the Lloyd Brazileiro knew what you were 4267
quoting; did you always know what they were quoting? A. Pretty nearly.

Q. How did you know that? A. From merchants.

Q. You kept pretty sharp watch on them to know what the rates were? A. Yes.

Q. Since this discretion was taken away from the conference here to vary the rates up and down what has been the policy with reference to the rates, having in view what the Lloyd's quoted rates were or offered rates? A. I think we have not regarded the Lloyd's quoted rates since then.

Q. Is it not a fact that it is only about two years ago 4268
that that was taken away from you, that discretion? A. I don't remember the exact time; I daresay it is about that time.

Q. Now then, since that time, this discretion having been withdrawn, in quoting your rates for kerosene oil you fixed it regardless of what the Lloyd were actually offering? A. I think so.

Q. Do you know whether or not since 1908 there was any tramp tonnage to be offered here for kerosene? A. I think not as long ago as that; I think only perhaps in 1911 or 1912 they began to charter full cargoes to Brazil.

Q. How do your rates compare with the charter rates

4269 or the tramp rates? A. Sometimes it has been below it and sometimes above it.

Q. Has the Lloyd Brazileiro been above the tramp rate? A. I don't know what the Lloyd rate has been recently.

Q. Do you know whether the Lloyd carry much kerosene or not? A. I don't know. I never followed the shipments.

Q. And until say in 1911 you don't think there was any tramp tonnage here that was offered for the kerosene trade? A. It might have been offered, but I don't think there were any full cargoes of kerosene up to that time.

4270 Q. So the price they offered would always be the full cargo rate, is that the idea? A. Yes.

Q. Since 1911 when they offered here were the rates varied up or down to meet the tramp rates that were offered? A. I think our rate was reduced from 36c to 30c at one time, and I believe the tramp competition had something to do with it.

Q. When was it? A. I can't remember, but six or eight months ago.

Q. You say you suppose it was about 30c; do you know anything about it? A. I say I knew it was reduced from

4271 36c to 30c.

Q. But you added something else, you supposed the tramp rate was something? A. Had something to do with it.

Q. Do you know anything about that? A. I suppose I do. If you look up the cables and——

Q. I asked do you know now? A. No; there must be some reason for it presumably.

Q. We assume there is a reason for everything, but I am asking a specific question? A. Yes.

4272

By Mr. Montgomery:

Q. Mr. Sparks, I don't know that I just understood your answer to Senator Spooner in regard to the proportion of passenger steamers to freight steamers; I am not quite sure and I cannot tell from the record whether you are referring to the trade between Europe and Brazil or the trade from the United States to Brazil? A. Senator Spooner asked the question about the trade from Europe to Brazil.

Q. I think you said it was about three to one, didn't you? A. I said that since I had been here before I had been informed that it was about one in three.

Q. You have no knowledge of your own; you have no 4273
authentic information that you have looked up in that interim? A. I have been informed by the Hamburg-American Line.

Q. By the Hamburg-American Line? A. Yes.

Q. You have not examined any data or any statistics or anything of that kind yourself to learn that fact? A. No; I told you where I got the information.

Q. No, I beg your pardon, Mr. Sparks; I mean that the information was by word of mouth? A. It was from the Hamburg-American Line. 4274

Q. And it is simply hearsay, isn't it, as you state it now? A. Yes.

Q. You know nothing more about it than you did before? A. No.

Q. And that is not anything of your own knowledge? A. Nothing.

Q. You have generalized somewhat, Mr. Sparks, about the effect of competition in the steamship business, haven't you, in your examination? A. I have testified about it.

Q You have stated that certain results are bound to 4275
result from competition, you remember that? A. I have.

Q. Have you in mind—in making that statement, had you in mind any regularly established independent lines seeking simply to maintain its regular independent service? A. Certainly I mentioned some. I will be glad to mention more if you like.

Q. You had such a situation in mind then and not a situation in which the lines were striving to bring about a combination which should ultimately control a given traffic? A. I had no such thought in mind.

Q. You have testified that the attitude of the Hamburg- 4276
American Line in putting on boats for New Orleans was retaliatory, I believe? A. Three times, I think.

Q. You would hardly call a retaliatory measure of that kind in entering a new service as an effort to maintain its own independent service in another area, would you? A. I had no such idea in mind.

Q. In the trade between here and China in which the American Asiatic Steamship Company is engaged and is now a member of conference, wasn't the fight there for the purpose of getting a recognized place in the conference that should control the traffic and exclude all outside competition? A. Certainly not.

4277 Q. Does the American Asiatic Company own any steamboats? A. No; that is, they did not when I was connected with them.

Q. They had no investment of that kind to protect in this trade? A. Not at that time.

Q. Do you know whether the American Asiatic Company as such has a good share of the sailings in that area now? A. It has.

Q. Wasn't the fight that the American Asiatic Steamship Company engaged in in 1903 a fight to have given to it a
4278 certain share of the sailings from here to the Orient and from the Orient here? A. That was not the original purpose.

Q. Wasn't that part of the purpose? A. Not at first, but subsequently developed into that.

Q. That is what they obtained? A. That is what the adjustment brought about, but that was not what the fight was for.

Q. That is what they obtained? A. It was.

Q. And at the time they obtained a position in the con-
4279 ference entitling them to a certain number of sailings they did not own a boat, did they? A. No.

Q. Let me call your attention to Exhibit 168, which appears to be a memorandum freight contract made February 1st, 1909, between Paul F. Gerhard & Company on behalf of the Prince Line, Hamburg-South American Steamship Company and the Hamburg-American Line joint service, and the Parsons Trading Company, containing this clause: "Shipments by the Prince Line and the Hamburg Line to go forward at net rate on shipments and Lamport & Holt Line ten per cent. primage to be added." Do
4280 you recall that contract? A. I do not suppose I ever saw it before, but that is evidently one of the cases where the Lamport & Holt Line exercised their option to charge ten per cent. primage.

Q. Then by saying they had an option you did not mean to say that it was expressed as optional in each contract? A. I think it is in a good many.

Q. But you mean that as to the situation in the conference, the conference gave them the option to charge? A. They have the option as against the other members of the conference of doing it or not doing it.

Q. But it appears in this contract that they did exercise the option and did charge? A. So I see.

Q. And you don't know in how many more they did? 4281
A. I do not. I have testified several times I don't know when they charged and when they did not.

Hearing adjourned to Monday, June 16th, 1913, at 11 A. M.

NEW YORK, JUNE 16, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCESS

4282
ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.
MESSRS. BURLINGHAM, MONTGOMERY & BEECHER; by Charles Burlingham, Esq., for Frederick T. Busk, *et al.*
MESSRS. SPOONER & COTTON; by J. C. Spooner, Esq., for Paul Gottheil, *et al.*
MESSRS CONVERS & KIELIN; by M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

THOMAS A. SPARKS, recalled. 4283

RE-DIRECT EXAMINATION continued by Mr. Montgomery:

Q. Mr. Sparks, I want to ask one question: isn't it a fact that all lines engaged in general transportation are either in a conference or else they are engaged in a fight in order to get into a conference? A. I don't know whether that is true or not; more or less, I think.

Q. Cannot that be put down as a principle in general of transportation?

MR. SPOONER: You mean all over the world? 4284
MR. MONTGOMERY: Yes.

A. I think that has been a general principle, yes.

Q. Is it true to-day? A. I should say so.

Q. You were asked, Mr. Sparks, to find the date on which the *Macedonia* sailed last March; have you done so? A. It is March 25th.

By Mr. Baldwin:

Q. Mr. Sparks, reverting back to just one question, that the boats sometimes remain as long as forty days down there; now, during any period that they are on the berth,

4285 whether delayed or not delayed, I suppose the crews are kept on the ship under pay and all expenses incidental to the ship are paid just the same as if there were no delays? A. Do you mean in Brazil?

Q. Yes? A. I don't know the business down there; I expect they are all on board.

Q. How about the ships themselves? A. What do you mean, Mr. Baldwin?

Q. Don't you know whether or not they keep the crews on board the steamers, the crews and officers? A. That
4286 is what I say, I don't know what the condition is down there. I think they do.

Q. You think they do? A. Yes.

Q. Who pays the expenses of the maintenance, including everything, the Hamburg Line? A. The ship owner.

Q. I mean is it paid here or there or in Hamburg? A. I don't know.

RE-CROSS EXAMINATION by Mr. Spooner:

Q. You have been asked, Mr. Sparks, if throughout the
4287 world the steamship business is conducted through conference and you said you supposed that is true, did you? A. Yes.

Q. Do you know how long that has been so? A. No, I don't think I do; a great many years.

Q. What would be the effect to the shippers and steamship companies if there were no conferences?

MR. BALDWIN: I submit he has already generalized as to what the advantages of this conference are, and it is not proper on re-cross examination to ask
4288 him to go into that matter any further; I also object to it as immaterial, irrelevant and incompetent.

Q. Go ahead, Mr. Sparks. A. The effect would be a demoralized service which would inure to the hardship of both the steamship lines and the shippers, particularly the small shippers.

Q. What do you mean by demoralized service in that connection? A. Service would become less regular and less dependable, and there would be no opportunity for joint contracts, thus increasing the particular opportunities given to shippers.

Q. It would lead to a nearly unregulated competition, 4289
wouldn't it?

MR. BALDWIN: Same objection.

A. It certainly would.

Q. And in the end the strongest people would hold the business? A. Undoubtedly.

Q. And monopolize it? A. Undoubtedly.

Q. You were interrogated as to the number of sailings provided for by the memorandum of agreement between 4290
Messrs. Lamport & Holt, the Prince Line, 24 sailings per annum, the Hamburg Lines combined 24; these lines have not made 24 sailings, have they? A. I can only speak for the German Lines. I don't think in any one year they had as many as 24.

Q. What I want to ascertain is whether or not the sailings have not been entirely adequate to the demand?

MR. BALDWIN: I object to that as asking for a conclusion.

4291

A. They have been adequate.

Q. You have been interrogated as to regular sailings considerably; is there a difference in the understanding in the trade—and when I say trade I mean shippers as well as steamship companies—between regular sailings of passenger ships and freight ships?

MR. BALDWIN: Same objection.

A. As far as the passenger ships are concerned they, of course, sail practically not only on a fixed date, but a fixed 4292
hour. In the freight carrying trade it is the process of evolution. When a line is first put on the amount of space always exceeds the amount of cargo; the business has to be built up and the result is that in its infancy the sailings are very irregular. Under favorable conditions they then become regular sailings; that is to say, they will be monthly sailings, or fortnightly sailings, or whatever the trade demands or requires in order to enable shippers to fill their contracts. The next development is a fixed sailing. That is the position we think we are approaching today and the position that we are urging upon our princi-

4293 pals, a fixed sailing date, which is a refinement, if I may say so, of the regular sailings.

Q. The regular sailings as to freight boats have not been understood to mean sailing on any particular date in the conference.

MR. BALDWIN: I object to what it is understood to mean.

Q. I mean in the trade, if you know? A. No, I don't think that a specific date has been at all the custom, but, as
4294 I said before, I think that is where we are working to and that is where we hope we are working to.

Q. To bring about such a situation as that takes time? A. It does.

Q. You were asked by me, and you corrected the answer this morning: "What effect does the c[illegible]erence understanding of various lines have upon the [illegible]nableness or the unreasonableness of rates—with [illegible]o whether they are reasonable or unreasonable' [illegible]nswered: "A. There is no opportunity ame[illegible]ar lines to
4295 raise their rates unreasonably." [illegible]not? A. For this reason, that the moment a rate b[illegible]ne unreasonable——

MR. BALDWIN: I submit that that being the question upon cross-examination by Senator Spooner that he should have exhausted it then and there and it is not pertinent now to any question I asked on re-direct and I object to it on that ground.

Q. (Question read.) A. Unreasonably high; either the shippers will singly or in combination put on their own
4296 service, loading brokers, charter steamers and accumulate the shippers' freight, or other regular lines are induced to look to the business.

MR. BALDWIN: I submit that is repetition.

Q. Is there business enough at those ports to warrant the ships—the conference ships—to go there regularly?

MR. BALDWIN: I object to that. He has already testified that he didn't know anything about that business down there. I submit he can say he does not know; that does not make it—I think the ques-

tion is objectionable regardless of his answer and he has shown no qualifications to answer. 4297

Q. If you know? A. I make the same answer that I made when I was asked the question before, that if there had been sufficient business the lines would have started there.

MR. BALDWIN: I ask to have that stricken out as a guess and not responsive to the question asked. He either knows or he doesn't know. If he knows then you have the right to qualify him. 4298

Q. I wish you would state to what extent—it may have been put in the record in this paper—to what extent your ships have come back from Brazilian ports in ballast during the period of this conference——

MR. BALDWIN: Hasn't he been examined very fully on that? He has given five boats that came back in ballast and the rest, some of it was mentioned as partly in ballast and none with full cargo, or something of that kind.

MR. SPOONER: That is in the evidence, isn't it? 4299

MR. BALDWIN: Yes.

MR. SPOONER: Very well; let that go. (Referring to Petitioner's Exhibit 229.)

Q. You testified that the operation of the conference—the steamships in the conference—increased and developed the export trade of the United States, did you not? A. I did.

Q. Have you any illustration in mind of that statement? 4300

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent.

Q. If you have, give it? A. Yes, I had in mind particularly the statement made to me by my brother, W. J. Sparks, who is in business at 68 Broad Street, this city——

MR. BALDWIN: I object to any statement made to him by anybody else. It is immaterial, irrelevant and incompetent, and is not within any real evidence and he knows nothing about it.

Q. Go on? A. (Continuing.) In a general export and im-

4301 port business, principally with Cuba, the Straits Settlement, Philippines, China and Japan. He told me about the end of February that he had received a circular letter from Judge Alexander asking for a statement of the effect of the conference upon his business, and that he had in mind to write and give some specific instances of the benefit of conferences to all shippers, but especially to small shippers, but that he had only answered the letter in a general way. He then gave me the specific instance that I had in mind as one of those that he would have
4302 mentioned to Judge Alexander. About the beginning of January he got a cable order for 23,200 pounds of cotton yarn to be shipped in equal fortnightly quantities from February to June inclusive. He was able to buy the——

MR. MONTGOMERY: Where to?

THE WITNESS: He received a cable order from Hong Kong. He was able to buy the yarn for the shipment required and without having to take any risk or spend very much time upon getting his shipping facility arranged;
4303 he simply called up one of the agents of the conference lines, got his rate and his guarantee of opportunity to ship. The yarn business he said is run on an exceedingly close basis. Had he not been able to get the guarantee from the conference lines that he would be able to get the shipments off in accordance with the stipulation of his China friend, he would be faced with two alternatives, (a) to decline to make fortnightly guarantees, or (b) to add sufficient profit to cover the possibility of having to ship overland or by Europe in order to live up to his guarantees. In either case the business would have gone else-
4304 where, probably to England or Japan, unless some large shipper here who could take the risk that he could not afford to take was to guarantee the shipments and take their chances of getting it off. He cited this as a very direct example of the benefit of conferences to shippers generally, and specifically to the small shipper.

Q. Where are the rates on commodities fixed in the conference?

MR. BALDWIN: Do you mean shipping rates?

Q. Yes, carrying rates? A. At the present time they are all given to us from the principals in Europe.

Q. They are not fixed in this country? A. No, I don't 4305
think any of them now.

Q. When was the *Macedonia* advertised to sail first, do you know? A. She was originally advertised to sail on March 20th; subsequently somewhere about the end of February, it was changed to March 25th, and she kept her sailing date.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. You stated in a general way that demoralization of shipments to the owners would result if there was no con- 4306
ference. You have already testified in your re-direct examination that in giving any opinion of yours or in generalizing as to the advantages or disadvantages of the conference you did not take into consideration what conditions obtained here to the shipper or the owners in the competition era of 1907? A. To Brazil?

Q. Yes, to Brazil? A. That is quite correct.

Q. And you have stated that you formed your opinion upon it largely, if I recollect, upon what happened in the Asiatic trade prior to 1904 and 1905, is that right? A. Yes, 4307
I mentioned that.

Q. Now, I asked you on re-direct whether or not it was not true that in the North Atlantic trade, eastward at least, in the freight trade, there was no conference; you remember that, don't you? A. Yes.

Q. And you said you didn't think there was? A. Yes, I did. I don't know much about it, but I don't think there was.

Q. You don't know of any demoralization of either shippers or owners that happened in that trade, do you, for lack of conference? A. No. 4308

Q. And that trade has operated out of conference a great many years, hasn't it? A. I think so. They are all serving their own markets.

Q. Now, what other specific trade do you now refer to within your own knowledge in which there was no conference and which this demoralization that you have spoken of had occurred other than the Asiatic trade which you have mentioned? A. I have in mind in addition a service that I tried to start——

Q. You stated that, yes; I am speaking now of an established line of trade—well, go ahead. You mentioned

4309 this one before and I was not asking you for that? A. I have not mentioned this at all.

Q. Very well, then I am mistaken? A. I had in mind also a service that we tried to start—in fact, did start, from Gulf ports, in Mobile, to Cuba, where under the strictest competition our sailings which we endeavored to make regular became irregular and finally stopped.

Q. In what respect was it that the lack of any conference between your lines and some other lines brought about that result? A. The freight earnings were not anything
4310 like sufficient to cover the expenses of the business.

Q. What has conference to do with it? A. That is the result of having no conference.

Q. You mean to say that after you had conference in there between your line and some other line that there would be enough trade? A. I didn't say anything about trade; I said freight earnings.

Q. Do you mean by that that your offer as to rate was so low on that Gulf trade that there wasn't any profit? A. I do.

Q. Was there sufficient cargo for you at any rate that
4311 you offered? A. I think we always had our boats full.

Q. If you had had a competitor in there with whom you were in conference in what respect would that have raised the rate so that you would have made a profit? A. The rates were cut every time a fresh lot of cargo came into the market and gradually sought a very low level.

Q. This line you say was from Gulf ports to Cuba, is that right? A. Yes.

Q. Or from Mobile? A. Gulf ports and Mobile.

Q. And what competition did you have? A. We had the
4312 competition of the Munson Line from Mobile, the United Steamship Company, I think it is called, from Galveston, the Southern-Pacific Company from New Orleans and the Ward Line and America-India Line from New York.

Q. Do those lines still serve that business? A. They do as far as I know.

Q. When was this that you made this attempt, Mr. Sparks, or started this business? A. I think in 1909.

Q. How long did it last? A. Oh, the best part of the year.

Q. Did you have boats of your own? A. Chartered steamers.

Q. And on time charters, I suppose, but for how long? 4313
A. Time charters.

Q. For how long? A. I cannot tell you; some of them were single trips and some charters were for a year.

Q. You would not call a single trip a time charter? A. Certainly; that is based on the length of time.

Q. How many sailings did you have all told? A. Approximately two a month.

Q. How many ships? A. I don't know how many ships they had; I don't know how many trips they made each; we changed the trips; they run sometimes one place and 4314
sometimes elsewhere.

Q. As a matter of fact, isn't the main reason why your lines ceased to do business down there because you could not get docking facilities? A. No.

Q. As a matter of fact, you did have great trouble in getting and maintaining docking facilities there, didn't you, at Mobile? A. No; we had a dock there all the time.

Q. At any other port did you have any troubles with reference to getting facilities? A. Everybody has trouble at Havana. 4315

Q. I am not speaking in Havana, but I mean from our ports? A. No; at the Gulf ports we can always go to the pier.

Q. Did your line embrace Colon as a point of arrival? A. We had another service to Colon.

Q. Did you give that up at the same time that you did the other? A. No, I think that was given up later. There was no more cargo. That was special cargo for the construction of the canal and it petered out.

Q. Well, then, that did not peter out by lack of conference, did it? A. No. 4316

Q. As a matter of fact, one of the main reasons why that service petered out was because you could not get facilities from the Government—wharf facilities from the Government, isn't that it? A. No.

Q. You had permission up to a certain time from that railroad down there, didn't you, to land at one of their wharves? A. Down where?

Q. At Colon? A. We always went to the Panama Railroad Company's pier.

Q. Where did you land in Mobile; I mean, where did you wharf in Mobile, at the railroad wharf? A. No, I

4317 can't remember the name of the wharf now, but it was a private wharf.

Q. Do you know whether the dock belonged to the Turner-Hartwell Company? A. I am glad you remind me of the name; I think it was the Hartwell-Turner, but I don't remember if that is right, the name.

Q. Didn't you have trouble obtaining proper facilities there because of some preference that was given to the railroad or something of that kind and that caused complaint by your company to Mr. Turner? A. I don't re-
4318 member any trouble with Mr. Turner.

Q. Do you remember any trouble at all about getting in any way at all the commodities to be docked for the purpose of shipment? A. Not to the Turner-Hartwell dock.

Q. Or any dock? A. Our agent down there wrote a great many letters; I haven't them very well in mind; but wrote a great many letters and complaints to, I think, the Interstate Commerce Commission and to the railroads because we could not get accommodation at the Mobile & Ohio dock.

4319 Q. And why? A. They wouldn't give it to us.

Q. Wasn't it all clinched up in contracts with the railroad company in some way so that it made the rate so high at any rate to your ships that you could not get cargo, isn't that it? A. Not that I know of.

Q. You know something like that happened down there that occasioned your line considerable embarrassment, didn't you? A. The difficulty of getting terminal facilities at the railroad wharf and perhaps a question of through bills of lading.

Q. That affected the volume of business offering, didn't
4320 it? A. I can't tell to what extent.

Q. Your own business? A. I can't tell to what extent.

Q. But some extent? A. I don't think so; at any rate, our agent gave it out so.

Q. In any event it also affected the results there materially? A. I don't know whether that had the effect; I know the results were very disheartening.

Q. You would not say here as a witness it did not affect the results in some degree at least? A. No, I think it probably did to some extent.

Q. Now, you say that the rates there whenever there was business offered on the berth were lowered, is that the

idea? A. Yes; I think they were getting continually lower. 4321

Q. And it was a recession from some higher price, is that the idea? A. Yes.

Q. And did that affect the other lines that were operating in the same way? A. No doubt.

Q. They are all operating now, are they not? A. I believe so.

Q. And goods and commodities are being continually shipped from the Gulf ports to Cuba? A. Yes.

Q. And commodities continually coming from Cuba to the Gulf ports? A. Yes, I think there is some fruit. 4322

Q. And the rates now down there, how are they, reasonable or unreasonable? A. I don't know anything about the rates now.

Q. Do you know the Munson Line? A. I do.

Q. It operates in that trade, doesn't it, from the Gulf ports? A. I just said so.

Q. And it did when your line was operating? A. Yes.

Q. Do you know whether it is in conference with any other line? A. I don't know.

Q. Isn't it a fact that it is not in conference and is successful? A. I think it probably is in conference. 4323

Q. Are you sure about that? A. No, I am not.

Q. Don't say you think it probably is, because you are getting in a field we have some knowledge about. If you don't know whether it is, I think it is best for you to say that, because the fact of it is it is not. A. Really, I am surprised.

Q. Well, you need not be. Your understanding is that is probably a successful service? A. I don't know how successful.

Q. And so far as you know none of those lines that have been mentioned, including the Munson Line, has been driven out of the service down there because of lack of conference? A. I don't know if there is a lack of conference. 4324

Q. Was there conference down there? A. I don't know.

Q. Is there any other line operating or was there in any time from Mobile to the West Indies? A. The Munson Line.

Q. That is the only one? A. There might have been a line to some other ports, I don't know.

Q. Then your complaint is—— A. I made no complaint.

4325 Q. Well, then, let me say the burden of your contention is, as an illustration which you mentioned, that your line had to go out of business because there was no conference there, is that the idea? A. No, I said on account of there being no conference the sailings first began to get demoralized and then ceased altogether.

Q. If there was only one other line operating from Mobile to the West Indian ports, how is it possible that the conference would have kept the sailings up? A. I don't understand your point.

4326 Q. Among other things you said that the sailings began to fall off and finally ceased altogether, and you used that as an illustration of the demerits of competition; or, put it the other way, that one of the results was that it failed from lack of freight. Now, if there is only one other line operating from Mobile to the West Indian ports, in what way did the fact that there was no conference affect your sailings that you say fell off? A. Just exactly as I say, that if there were no conferences it would eventually come down to one line only in each trade.

4327 Q. Then your idea is that if you could have formed a conference with the Munson Line that your service would not have ceased? A. Yes.

Q. Is that the idea? A. I expect not.

Q. If that is true, then why did you cease, or part cease, because of lack of business? A. I didn't say lack of business; I said lack of revenue.

Q. You had plenty of business offered? A. We had a certain amount of business, yes.

Q. Did you make offers to the Munson Line to establish a conference to fix rates? A. We discussed it.

4328 Q. What do you mean by discussed it; was it in the form of a conference or did you make a proposition to enter into agreement so as to establish rates, sailings and so forth in your trade? A. We had several discussions, informal.

Q. It did not work out? A. It did not.

Q. Do you know how many sailings the Munson Line had a week at that time? A. I think they had a weekly service with occasional extra boats.

Q. And you had? A. Fortnightly service.

Q. In other words, you had two boats to their four? A. Or five or six.

Q. You mean with the extra ones? A. Yes.

Q. And were they able to maintain more boats because 4329
they established better rates to the shippers than you did?
A. They had been in business longer and they had more
of a clientele.

Q. Did they also own their own boats? A. No, I think
that particular service was all operated with chartered
boats.

Q. Mr. Sparks, this United States Shipping Company,
as I understand, is owned—that is, the stock is owned—
very largely by the firm of Funch, Edye & Company, is
that right? A. They have a stock holding in that com- 4330
pany, yes.

Q. Was it a majority of stockholding? A. No, I think
not.

Q. Well, was it in any way controlled or any of this
stock owned by the Hamburg Lines? A. No.

Q. Is this entirely a separate matter of Funch, Edye &
Company? A. Entirely, the United States Shipping Com-
pany were——

Q. I mean in so far as they had control they put in their
own officers, I suppose, Funch, Edye & Company? A. Into 4331
what?

Q. The United States Shipping Company? A. They
were elected in the regular course of events.

Q. Who were the officers? A. George Rossen was the
president, Hugo Heyman the vice-president and I think
C. Hagemann is treasurer.

Q. With what line, if any, are they associated? A. Mr.
Rossen is the president of the United States Shipping
Company and nothing else as far as I know; Mr. Heyman
is the vice-president of the company and nothing else as
far as I know; Mr. Hagemann is an employee of Funch, 4332
Edye & Company.

Q. Then the East Asiatic trade or the Asiatic trade, and
this instance of the United States Shipping Company are
the only instances that you now have in mind upon which
you base any knowledge, personal knowledge, of the disad-
vantages of competition? A. Yes, they are the two I have
in mind at the moment.

Q. Have you any other one that you now can think of?
A. Not at the moment.

Q. Among other things you said that if there was an
open competition between these lines there would be no

4333 chance for joint contracts. Do you consider that joint contracts are always essential? A. I think they are exceedingly necessary to shippers to enable them to compete with European shippers.

Q. Why is it that the European shippers would have any advantage over them if they could not avail themselves of joint contracts here? A. Because there are so many more sailings from European ports.

Q. And now you are speaking entirely of the advantage in this respect of the Brazilian trade? A. It applies either
4334 to Brazil or the other trades.

Q. Now, with reference to the shipments from this country to Europe, we will say, do you know or not whether or not merchants are able to make joint contracts for their shipments from here to Europe? A. The trans-Atlantic Service practically only serves their own ports, so that the same conditions do not apply at all.

Q. Aren't there a number of very large shippers to Brazil that do not avail themselves of the opportunities of joint contracts to Brazil? A. Yes.

4335 Q. Have you enquired of any of them as to whether or not that joint contracts are at all essential to them as merchants in this business? A. I don't remember specifically.

Q. The American Trading Company is one of them, isn't it, a very large shipper to Brazilian ports? A. Yes, considerable; they do not operate under joint contracts, do they? A. I don't know whether they do or not.

Q. Did you ever hear of it where they did? A. No.

Q. There are a number of others, are there not, besides
4336 the American Trading Company that go along in that way of trade, are there not, besides the American Trading Company; that is, they just do not avail themselves of the conference or the conference joint contracts, or the rate for joint contracts, and still conduct a large and flourishing business to Brazil? A. I don't know how flourishing their business is to Brazil.

Q. You understand it is quite a large one, don't you? A. Yes, moderately so.

Q. And they have been conducting it for some period of time, some years? A. Who are you talking about?

Q. The American Trading Company? A. Oh, yes.

Q. Now, the Singer Company didn't have joint con-

tracts until rather recently, did they? A. I don't remember just the wording of the Singer Contract. I think originally they had a contract with the Lamport & Holt Line and the Lamport & Holt Line had an option to use the other service if they had sufficient tonnage. The contract was then changed and they made their contract with the German Line with the option of shipping by the other services. 4337

Q. Isn't it a fact that they did not seek and in the first instance did not want these joint contracts? A. That must be some interior arrangement of theirs. They probably have their—— 4338

Q. Isn't it a fact as far as these joint contracts are concerned, when first suggested to them they did not want it? A. I don't remember that.

Q. You would not say it is not so? A. I think it probably is true.

Q. And is it not also true that before they would sign these contracts, joint contracts, that they demanded and got a concession in rates away from the rates? A. Certainly, on account of the improved service. 4339

Q. I am not asking you about on account of improvements in the service; I say as a matter of fact before they signed or agreed to sign any joint contracts they demanded and got reduced rates? A. I don't remember the rate was changed or whether it was increased or reduced when they got that.

Q. Of course, when I say rates you know I mean always the tariff? A. I thought you meant lower than they had previously had.

Q. No, lower than the tariff rates? A. I don't know whether there is a tariff on sewing machines. 4340

Q. You don't know anything about that? A. No.

Q. Among other demerits of the competitive system is that you could not have fixed sailings, do you remember that? Not fixed sailings, but regularity of sailings I think you mentioned, or fixed sailings afterwards, is that right? A. Yes, it is not usual.

Q. Does not the Lloyd Brazileiro sail quite as regular as any of the lines in the conference? A. That is a large service, yes.

Q. Fairly regular? A. Fairly.

Q. So far as you know quite as regular as your own line?

4341 A. I don't know how regular they are, just they have a number of boats a month. I should call that a regular service, certainly.

Q. Does the Munson Line have fixed sailings from the Gulf ports to the West Indies? A. Yes.

Q. If your understanding is that the Lloyd Lines have regular sailings and a large service and the obtaining of such a condition depends upon conference how do you account for the fact that they are able to do it outside of the conference? A. I should account for it in supposing that
4342 they are a Government encouraged enterprise, and being a national enterprise therefore are not controlled by commercial judgments that would control in other cases.

Q. Your idea is that the regularity of the sailings from New York depends entirely upon the fact that it is more or less a Government enterprise? A. I think that has had a great bearing on it in all the years this was running.

Q. Has it had a bearing upon the shippers? A. I don't know what you mean.

Q. You have mentioned certain conditions that in your
4343 judgment affect shippers and things that would operate in their favor by conference; now, I ask you if you know whether in the judgment of shippers who patronize the Lloyd Line, which you say goes fairly regularly, that that has been influenced, the fact that it is a national enterprise has influenced the shippers? A. I dare say there has a lot of cargo been reached by the Lloyd when the orders come to her from Brazil.

Q. You say you have no doubt about it; do you know anything about it? A. Yes.

Q. Where did you get that information from? A.
4344 Shippers.

Q. Then you know from hearsay—somebody has told you that? A. Certainly.

Q. Of your own knowledge you have none? A. I do not receive the orders, no.

Q. Would you say that was the large proportion of the business of the Lloyd Brazileiro? A. I don't know anything about it.

Q. Well, is there any reason that you can suggest that enables the Munson Line to ship regularly outside of the conference? A. I did not say they were not in a conference. I said I thought they were in a conference.

Q. Well, assuming—— A. I cannot assume that. 4345

Q. I assumed in the question, which I have the right to do. Assuming that it is not in conference would you say, or would you give a reason why they have been enabled to maintain regular sailings? A. I don't see how I can answer the question in as much as I cannot have the same assumption that you do.

Q. Let me put this in a little different form. Is it your understanding that as far as the Mobile and West Indies trade is concerned that the Munson Line is in conference with some other line? A. I said I thought so. 4346

Q. Well, where did you get the information upon which you base that thought? A. They have a joint tariff, I believe, with a number of other lines.

Q. I am asking you not what you think, but where you get the information on which you base that statement? A. I think they have a joint tariff with several other lines.

Q. I am asking you again upon what facts or information or data that you base the thought that it is in conference with some other line, upon what facts? A. I base it upon the information that they have a joint tariff with several other lines. 4347

Q. Have you seen that joint tariff? A. I have, many times.

Q. How recently? A. Certainly not within the last year But prior to that time.

Q. A joint tariff with some other lines—— A. With several other lines.

Q. Several other lines from Mobile to the West Indies? A. Their service is from Mobile; the other services are from other ports.

Q. And if they are in conference with other lines from 4348 other ports to the West Indies you mean by that other Gulf ports? A. Yes.

Q. Well now, what other lines do you say the Munson Line is in conference with? A. I said I think they are in conference with——

Q. You said in joint tariff; now, with what lines? A. I said I think they are in conference.

Q. You said conference; now what lines? A. I said I think they are in conference and I have seen a joint tariff. The United Steamship Company from Galveston and the Southern Pacific connection, whatever it is called, from New Orleans, the Morgan Line, I guess.

4349 Q. And how long would you say since you have seen that? A. About a year, I think; at least a year.

Q. Well then, if they were in conference then the failure of your venture down there was not due to a lack of conference at all, was it? A. I don't know why not.

Q. You are just now saying those lines are in some sort of conference at least upon joint tariff? A. During the time that we were running the business the rates were cut all around.

Q. Then there weren't any joint tariffs at all and no
4350 conference? A. I don't think they were acting in a very conference-like spirit at that time.

Q. I am not speaking about a conference-like spirit, I am asking you whether or not they were in conference? A. I don't know whether the conference was suspended or maintained during that time.

Q. When you negotiated with the Munson Line with reference to making some sort of a conference agreement did that contemplate a conference with them or with them and other lines? A. Certainly with the other lines.

Q. In the discussion that you had with the Munson Line
4351 with reference to a proposed conference didn't you learn or ascertain during those conferences that there was a conference between the Munson and some other line? A. I think I took it for granted that they were talking for others besides themselves.

Q. Did you talk with the others yourself? A. Yes, some of the others.

Q. Well, then, what other lines did you talk with? A. The representative of the United Steamship Company of Galveston.

4352 Q. And you took it for granted and they took it for granted that there was a conference? A. If there had been a settlement at all it would have been a settlement all around of course.

Q. Was this during the time you were operating your boats? A. Yes.

Q. Is it true or not true then that at that time there was a conference? A. I don't know whether there was or not.

Q. Didn't you go upon the supposition that there was at least a conference between the Galveston Company and the Munson Line? A. I think they were very anxious to get together because the companies were losing a lot of money.

Q. I didn't ask you that, and you can be responsive without telling me a lot of stuff of that kind. (Question read.) I did not ask you whether they were losing money or anything else; I asked you if you did not go upon the supposition that there was? A. I have already testified that I don't know whether the conference was on or off during that period. 4353

Q. My question still is whether or not in seeking a conference you went upon the supposition there was one? A. I did not seek the conference.

Q. Did they seek you? A. They did. 4354

Q. Well, in the talk you had with them or anybody else did you go upon the supposition that they were in conference? A. I don't know that I thought of it at all.

Q. Now, coming down to the question—you stated among other things, Mr. Sparks, that if rates were unreasonably high that it would invite two kinds of competition, as I recall it, the brokers here might accumulate freight and then charter, or that it might invite the incursion of other boats, that is right, isn't it? A. Yes.

Q. Well, in using the words "unreasonably high," what did you mean by that? A. I mean so that there was more than a reasonable profit over and above the current market rate of chartered steamers. 4355

Q. Your idea is that if you put the rate just as high as the traffic would bear then you would not have that competition? A. That might still be below the cost of tramp boats.

Q. If you put the rate as high as the traffic would bear yet you would be cautious enough to put it at a price that would not invite all this outside competition, is that the idea? A. That is not the idea at all. 4356

Q. Now, coming back to this tale of your brother's, did your brother state where he was to get his cotton yarn from for those commitments? A. He bought it in this country.

Q. Yes, I presume he must have. Did you know or did your brother tell you that there are various places in this country that you can buy cotton yarn from, cotton spinners? A. He wouldn't have to tell me it.

Q. You know among other things that there were places in the south like Sumter, South Carolina, and Greenburg and a number of other places where they have large spin-

4357 ning mills? A. I don't know whether any yarn comes from either of those places.

Q. You know a lot of it does come from North and South Carolina, don't you? A. Yes.

Q. And from Alabama? A. I don't know about Alabama.

Q. And Georgia? A. It is quite likely.

Q. And a lot of it comes from Massachusetts and Rhode Island? A. Yes.

Q. Didn't he tell you that the business was done on such
4358 a very narrow basis as between the spinner and himself, is that what you mean, that unless he was absolutely assured that his merchandise would go out at a fixed time he could not have made this contract? A. That has not to do with the arrangements between the spinner and himself; it has to do with the cost of freight and insurance laid down in Hong Kong between the American commodity and the English or Japanese commodity.

Q. You have said the business was done on such a very narrow margin, what do you mean by that? A. A very
4359 narrow margin of profit for the exporter.

Q. Isn't it a fact that the conference lines here canvassed the situation to ascertain what points he was to get his cotton yarn from and then established the rates just as high as they possibly could so he could do business with them? A. Certainly not.

Q. As to whether or not there was a profit for him on this cost and freight business you mentioned would depend somewhat on where he bought his cotton yarn, wouldn't it? A. It depends entirely on the price you could buy it at.

4360 Q. And the price would depend somewhat on where he would be able to buy it? A. I think they will quote f. o. b. New York.

Q. All of them? A. As far as I remember, yes.

Q. Do you remember, for instance, if the conference had either quoted or determined a rate according to the origin of the cotton; that is to say, if it originated in Augusta or some other place like that, it was to be a certain rate, but if it originated at Providence or Massachusetts another rate? A. That is so on cotton domestics.

Q. I am asking you about this cotton yarn? A. No, I think there is only one rate on cotton yarn.

Q. Now, all you know about this instance is what your 4361
brother told you? A. Certainly.

Q. What criterion as to the reasonableness or unreasonableness of rates had you in mind when you answered Senator Spooner's question? A. The criterion of whether the revenue furnishes a fair profit on the capitalization of the property involved and the services rendered.

Q. Are you familiar with the course of doing business of these various lines; that is, knowledge of your own? A. No.

Q. Have you seen the statistics of the cost of doing busi- 4362
ness of either one of these conference lines? A. I have heard of the great losses that they have made, yes.

Q. I did not ask you that. I am asking you whether or not—I ask to have it stricken out—whether or not that you have seen data or statistics that show the cost of doing business? A. No.

Q. So then in determining whether or not that rates are reasonable or unreasonable you have no first hand knowledge at all of what the cost of doing business is? A. No, I do not determine the rates.

4363

Q. But you have testified about whether the rates were reasonable or unreasonable and I am asking you now the question whether or not in giving that opinion of yours you had any definite personal knowledge of the cost of doing the business in these lines? A. I have not.

Q. Now, the lines as a rule have different rates, do they not, on various commodities? A. I do not understand your question.

Q. In the various commodities which ship over these lines, or over the Asiatic Lines that you are familiar with, 4364
the lines have different rates for the different commodities, haven't they? A. They have.

Q. And some of these commodities upon which you fix rates could not be accommodated on tramp steamers in the usual course of business; that is to say, they were not proper for tramp tonnage? A. Only on account of their being shipped in small lots.

Q. That is what I mean. Now, Mr. Sparks, if you don't know, as you have already testified, the points of origin of the freight carried from New York how can you state there is not a volume of business to justify the putting on of a line from the Gulf ports to the Brazilian ports? A.

4365 My premises are these: first of all that the principals engaged in the trade with Brazil from here have not so started a line, and in the second place because I believe a line did start and failed to carry out its purpose.

Q. What line? A. I think it was called the Pan-American Mail, or something like that.

Q. Do you know as a matter of fact that the reason the Pan-American Mail did not make a success of it was because they could not get any return cargoes from Brazil to the Gulf ports? A. I am quite sure that was not the
4366 reason.

Q. You say you are quite sure. Now, let's see what you have of personal knowledge in your mind that makes you so quite sure? A. In the first place the Pan-American Mail —if that was its name—was a doomed enterprise when it started; they began by chartering steamers on a high market on a time charter basis to carry the lowest forms of commodities that go to South America; they were already paying what must have been a large profit to the owners of the steamers they chartered and there was no
4367 room for profit. They started in as I understand with a very small capital and you cannot start in the steamship business with any hope of success with a small capital.

Q. Then your view is that if it had sufficient capital to have owned its own boats there would have been a sufficient volume of trade for it to have operated in the Brazilian trade? A. I think it would have operated profitably in the commodities that were available in competition with tramp boats by simply going from one port to one port. A liner cannot carry lumber in competition with a tramp.

4368 Q. A moment ago you testified as I recollect it that there was not sufficient trade to warrant the putting on of a service from Gulf ports to Brazil? A. I do not recollect testifying that. I testified I think that I did not think there was trade that would warrant a profitable service from the Gulf ports to Brazil.

Q. Do you know anything about the volume of trade that was available for shipment from the Gulf ports to Brazil? A. I think the line in question loaded a few boats.

Q. I did not ask you whether the line loaded a few boats or not; I am asking you if you know anything about the volume that was available, whether it was shipped or not? A. No.

Q. Do you know personally what this Pan-American Mail 4369
paid for their charters to the owners? A. I think they paid all the way from 6 and 9 pence up——

Q. I don't ask you whether you think; I ask you whether you know and whether or not this statement of yours is based upon supposition; do you know or don't you know? A. I have read testimony in this suit that they paid six and nine pence and I know as a matter of market information that they paid ten shillings for another boat.

Q. How do you know? You learned from some other source that they paid that? A. It was information avail- 4370
able in the market to everybody.

Q. What was the source? A. I don't recall.

Q. You don't know anything about it personally at all, do you? A. I know as much as anybody else in the freight business.

Q. You mean to say then that you either saw the charters or copies of the charters that were executed by the owners and the charterer in which the rates were specified? A. No, I don't think I have.

Q. Well, as a matter of fact, as to its capitalization and 4371
everything else your knowledge is entirely hearsay, isn't it? Of that company? A. I think it is in the testimony.

Q. I am asking you whether it is not hearsay? A. It is not hearsay if I read it in the testimony.

Q. Do you call it hearsay if you get information in the market without first hand knowledge as to what the contractual agreements are between the two parties, is that the idea? A. I have not sufficient legal knowledge to determine such facts or not.

Q. Do you mean to say that it is not true that that line 4372
could not get return cargoes down there because all the merchants were afraid to give them any cargo because they would lose their rebates from the conference lines? A. No, I do not say that that is not true; I don't know anything about it.

Recess taken until 2.15 o'clock P. M.

4373 AFTERNOON SESSION.

Present: all counsel as before and Mr. Kirlin.

THOMAS A. SPARKS, recalled.

RE-DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Sparks, in answer to a question of Senator Spooner which was to the effect that it was the difference between regularity of sailings as relating to freight and
4374 that relating to passenger service, now, what did you mean by that? A. I said that passenger service; where it has a fixed day or regular sailings, practically has an hour as well as a day to sail, on account of getting passengers on board. The freight service on the other hand has the difference between an irregular sailing, a regular sailing and a fixed sailing, the fixed sailing being the evolution of the other two, and is the thing we are aiming at.

Q. Then, when you spoke of regular sailings for freight service you don't even mean that it is either upon an abso-
4375 lutely fixed day or hour? A. No.

Q. That all depends on certain contingencies, I suppose, of weather and all that? A. It depends on whether you have adopted the fixed sailing principle or a regular service.

Q. Well, now, so far as you say you are aiming to have a fixed service, is it entirely possible to have fixed service even for the freight? A. Yes, we are having it to Brazil now.

Q. And that was installed at what time? A. The beginning of March of this year.

4376 Q. Does that apply to all the lines in the conference? A. It applies to our line.

Q. Only your line? A. I think the Lamport & Holt always has had it.

Q. The Lamport & Holt has, then, because of being a passenger service largely, has always been somewhat in a class by itself on that point, hasn't it? A. Yes.

Q. Now, you say you are aiming at fixed service, and I assume by that you mean fixed date and all that for the freight traffic? A. Yes.

Q. What do you mean by aiming, simply your line or the conference lines generally? A. Our line.

MR. SPOONER: That is for freight? 4377
THE WITNESS: Yes.

Q. Well, now, in differentiating, Mr. Sparks, between what you call regular service and fixed service for freight traffic, what do you mean? What is your idea in designating or calling the service a regular service? A. The regular service is if you have a service of boats running at approximately stated intervals—that is to say, monthly service or two weekly service or weekly service.

Q. Regardless of whether or not they sail on the exact 4378
date or not? A. The same day.

Q. And that is your idea of what would constitute a regular service in the freight line? A. Anything at all from two months' service to one monthly service, as long as you had what you started out to have and had it regularly.

Q. What would you consider would constitute regular service as to how approximately near the boats would sail on their advertised time? A. Well, as long as they were here to receive freight and give bills of lading in the month that they were intended to cover I would call that a 4379
regular service.

Q. In the same month? A. Yes; that is, if you are aiming at monthly service. If you are aiming at bi-monthly service it would have to be here and give bills of lading the first half or the second half or in the month.

Q. What difference would the actual making up and delivery of the bill of lading have to do with the question of the regularity of the sailing dates? I can well understand how you might make out your bills of lading and deliver them to your prospective shipper in advance of tak- 4380
ing the commodity aboard the boat, but I don't see the relation between them as far as regularity is concerned and the actual sailing of the boat upon or close to its scheduled time? A. There is a great difference. If you advertise a semi-monthly service your shipper sells for the first half or the second half of the month, or perhaps both. If you have your boat here so that you can accept the cargo and give bills of lading for it the shipper is able to carry out his contract. If, on the other hand, your service was so irregular that the boat did not arrive at all during that month, it might be a very difficult matter for you to satisfy your shipper.

4381 Q. Your idea is that if the shipper succeeds in getting you to deliver a bill of lading and take the commodity into your custody that that is sufficient for his needs, and so far as his customer is concerned; is that the idea? A. It is undoubtedly, as long as your boat turns up in a reasonable period. Of course, if you accept something for the beginning of June or the first of June shipment and the boat doesn't come until the first of July it would not be in time.

Q. Assuming that it is a fortnightly sailing, an adver-
4382 tised sailing, what would you consider then a reasonable service having in view the fact that you advertised in that way for such periods? How close to the time would you consider that the shipper would be benefitted? A. Well, you mean the actual sailing date?

Q. Yes. A. Well, you would have to have your boat here so as to sail within a few days—five or six days—after her advertised date.

Q. Well, you mean by that if you sailed within any time within a week of the advertised date that that would be sufficient for the purpose of the trade? A. Yes—I don't
4383 think that is good enough, no. I have already said I think we have reached a point of development where we ought to have actual sailing dates and I think that applies to all our trade.

Q. Hasn't that same necessity existed before? A. No, that has not been possible because shippers have been so dilatory about the delivery of their goods. It is a difficulty we have to work out by a gradual process of development.

Q. You mean to say then very recently the shippers
4384 have become more alert and that they therefore provide their shipments with more regularity? A. Well, we find that the effect follows the cause. When we can persuade our principals to take the risk of sending their steamers away with empty space by advertising a fixed sailing date, then the shippers suddenly wake up and find there is going to be a fixed service, and they get their stuff ready.

Q. Then, prior to the time that you have started these dates for fixed sailing you had not been able to persuade your principals to inaugurate a system that way, have you? A. Well, I don't remember that we tried in the Brazil trade.

Q. And how long has that been operating now? A. 4385
Since the beginning of March.

Q. And since March you find that there has been a complete change in the trade, do you? A. A complete change in all the service.

Q. How about the response of the shippers who comport with you? A. Well, it has been very fair considering that the market is very bare of cargo. We have sent almost all the boats away with large quantities of space, but our principals say they are prepared to bring that sacrifice in order to work what we want—a fixed and regular 4386
service.

Q. Do I understand, then, that within a very recent period there is a dearth of cargo? A. Yes.

Q. And I understood you to say Friday that the dead weight cargo rates have been reduced? A. Yes. I don't recall the circumstances very well, but I think 60c. a ton.

Q. Has the rate been reduced upon anything else but dead weight cargo? A. No, and it is only on some commodities of dead weight cargoes that we reduced.

Q. What were they? A. I think wire products and ce- 4387
ment.

Q. Those are the only ones that you recall? A. Yes, sir.

Q. And the other rates, then, are the same, so far as you know? A. Yes.

Q. Do you know whether or not goods are now sold in Brazil based upon the idea of a first or last half month shipment? A. Yes, I think they are.

Q. It has not been changed since this new system has been inaugurated at all? A. Why, that I can't tell you. We have done our best to advertise the fixed sailings. 4388

Q. Do you know whether you have altered your advertisements at all in the Journal of Commerce as to this new method of service? A. I don't remember, Mr. Baldwin, whether there is any notation that the boats sail on that date or not. We have circularized it very industriously among the shippers, that I know.

Q. Do you mean by printed circular or notice of any kind? A. No, I think we did it verbally.

Q. You must refer to the larger shippers, don't you? A. No, sir; we have canvassers out all over the market, small shippers too.

4389 Q. Do you know, Mr. Sparks, when the *Theodore Willie* sailed? A. I told you last week she did not sail on that date, and I told you why.

Q. I don't recall it now; what was it? A. She was chartered at great expense to deliver Hamburg and re-deliver Europe and come to New York in ballast and go down to Brazil because of the great delay in one of our own boats in Brazilian ports. It was a very expensive operation for our principals.

Q. You advertised the sail on what date? A. The 25th
4390 of May.

Q. And she did not sail until when? A. The 4th of June, I think, or the 3rd of June.

Q. And did you substitute any other boat in place? A. No. She was the boat substituted for the other boat, and being a chartered steamer we could not control her movement and had to take what we could get, and brought her over in ballast in order to fill the terms.

Q. Then you see this new plan of yours so far as the sufficiency is concerned, would depend very largely on circumstances? A. I think not.

4391 Q. Well, here is a circumstance in which you could not control, and it did affect it? A. That is only the exception that proves the rule.

Q. You don't think there is a possibility of any other exceptions? A. Yes, there is an exception to every rule, but it will be very rare.

Q. By the way, your brother is not in the Brazil trade, is he? A. No.

Q. Now, referring again to his being able to make contracts in advance for shipments by which his shipments
4392 are guaranteed. How does his position differ, if at all, from those shippers here who ship over the Lloyd Brazileiro and have contracts for a period of time? A. Entirely different trade, entirely different conditions; I can't compare the two.

Q. Well, this instance of your brother, that, given for the purpose of illustrating your generalization, was only valuable if you take it in reference to the Asiatic trade; is that it? A. No; valuable to all long voyage business to some extent.

Q. Well assuming that the shippers here or some of them or many of them make these time contracts with that

Lloyd Brazileiro take for their specific amount of cargo to go within a given time, or for time itself, is your brother an illustration of that trade? What do you say of the situation that I have just stated in reference to the Lloyd Brazileiro? What does that illustrate? A. The opportunities of the conference lines are being doubled with the Lloyd Brazileiro and the shipper requiring double the opportunities that the Lloyd Brazileiro give would of necessity prefer the conference service. 4393

Q. Do you know what proportion of the Lloyd Brazileiro—what proportion of the business from this port to Brazil the Lloyd Brazileiro have? A. They carry quite a large proportion because their steamers are large, and I think they have approximately about three departures a month; the conference lines have six. 4394

Q. If they require either more transit or better service these shippers instead of confining their shipments to the Lloyd Brazileiro or shipping largely over the line, they would employ the conference line and the Lloyd Brazileiro, would they not? A. They do.

Q. Well, then, in that respect this illustration that you speak of in no way illustrates this trade between here and Brazil, does it? A. Yes, he does; because they would then have to make two freight contracts, both of which they would have to fill up, at possible inconvenience to themselves, whereas if they could—— 4395

Q. Assuming it is not inconvenient to themselves?

MR. SPOONER: Let him answer.

THE WITNESS: That is all.

Q. Assuming that it is not inconvenient to themselves, that would not illustrate that situation at all, would it? A. No. 4396

Q. Well, the Lloyd Brazileiro are quite able to take care, are they not, of any offers of merchandise that are made to them? A. That depends.

Q. Aren't they quite as capable if they can carry on their regular boats to charter steamers as your line is? A. Yes, but there being considerable doubt as to whether they would do it.

Q. Why, they are capable? A. I don't know of their capacity, but being national enterprise, I presume they are.

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4397 Q. What I am trying to find out is using this illustration of yours of your brother and assuming that the Lloyd Brazileiro are quite capable of taking care of any business that is offered to them, how the shipper would be at all benefitted by simply having all these boats confined to a conference rather than to have independent lines any one or all of whom might be or were able or should be able to take care of their shipments? A There is no objection to an independent line.

4398 Q. Well, perhaps I don't quite catch the import of this illustration that you mention, but as I recollect it it was to the effect that your brother was able to make contracts in the Orient by being assured that he could have his shipments forwarded within a given period of time. Is that putting it broadly? A. For a long distance ahead at a fixed rate.

4399 Q. Well, does this illustration determine the utility of conference according to the length of the voyage only? A. No, nor does it apply to a trade where there are some lines in the conference and one line not. I was talking of the evils of unrestricted competiton where you could not make joint contracts on any line. In the Brazil trade some of the lines are in conference and they furnish a very excellent service. There is also an independet line that also furnishes a very excellent service.

Q. And that line is what? A. The Lloyd Brazileiro—a small and insignificant line as described in the petition.

Q. You seem to have saturated yourself suddenly with what is in the bill? A. That particular one I remember.

4400 Q. Yet the other day you could not remember precisely anything mentioned in the bill. Since when has your memory been refreshed? A. That is such a remarkable statement it is one of the things that fixed itself in my mind.

Q. Not the only thing, however? A. No, that is one of the things.

Q. Now, am I to infer from your statement of what constitutes the differences between this trade and the Asiatic trade is that if there happens to be some lines in a conference and one line or more is not in the conference, then the shipper is not particularly helped out by the fact of the conference line existing in that trade? A. I don't understand the question.

Q. Well, assuming that there is a conference between

certain lines in a given trade and an independent line ex- 4401
ists capable of taking care of its proportion of the trade, has that conference any particular benefit to the shipper in making joint contracts? A. I say that that is a great deal better than unrestricted competition, but perhaps not so good for the operation of the shipper as if all the lines were conference lines.

Q. Then your illustration goes back primarily to the contemplating of a situation where there was unrestricted competition and no conference at all? A. That is correct.

Q. And loses its force to a certain degree at least if 4402
there is restricted competition in part of the trade and unrestricted competition in the balance? A. It is not a question of the competiton; it is a quesion of the service

Q. When I use the word competition I mean agreement? A. Facility?

Q. Yes. A. Yes.

Q. Well, in this illustration of yours you yourself would not consider that particularly illuminating in a trade where the merchants would have an opportunity to make contracts freely between lines part of whom were in the trade in conference and part were not? A. Certainly I 4403
should.

Q. Well, where would his advantage be then, in the conference part alone? A. Because the existence of the conference guarantees a certain amount of stability both as to service and to rates, and therefore applies in that instance almost as much as it would where lines were all in conference.

Q. Well, is that your idea that that would apply to merchants who did not patronize the conference and patronize the independent lines? A. They would do that because the 4404
exigencies of their business did not require them to do otherwise.

Q. I am asking the question, is that your idea that that would apply to merchants who did not patronize the conference but patronized the independent lines? A. I don't know.

Q. Isn't it a fact that at least 50% of the shipments from here go by the Lloyd Brazileiro? A. Of the general cargo shipments or you mean of the total trade?

Q. Of the total? A. I should think not, but quite 50% of the berth trade, I should think, does.

4405 Q. I am not speaking now about the value of the freight cargo but I am speaking now in volume? A. I am also talking about volume.

Q. You don't think they have 50% of it? A. The total trade?

Q. Yes. A. No. 50% is all that is left in the trade between the conference lines and the Lloyd Brazileiro.

Q. The balance is carried by tramp? A. Tramp steamers.

Q. Eliminating then the large lines that charter, for in-
4406 stance, like the Standard Oil Company, if they do charter, and I think you testified they do? A. They do now, yes.

Q. And the United States Steel Products and some of the other large companies, then in what ratio would you say the balance of the trade was divided up between the conference lines and the Lloyd Line? A. You have left out a large portion of the cargo and I don't know which side you mean to leave it on.

Q. I am trying to include in my question all of the cargo that goes by chartered steamers, and then as to the bal-
ance, how much would go by the conference lines and the
4407 Lloyd Brazileiro? When I say chartered steamers I mean those chartered by those other than any of the conference lines and the Lloyd Lines? A. Well, my impression is that the total volume, about 50%, goes in the regular lines and 50% in the chartered steamers, that is to say, tramp steamers, full cargo steamers. Of the 50% that goes in the regular steamers, I think the Lloyd Lines carry about half.

Q. Well, you said that 50% is carried by tramps. You mean 50% carried in chartered steamers? A. I said char-
4408 tered steamers, that is, full cargo steamers.

Q. I think there is some evidence here that only six chartered steamers sailed from here last year, or six tramps. Do you mean to say those six tramps or six chartered steamers, whatever you call them, carried 50% of the bulk of cargo? A. Any evidence to the effect that there were only six chartered steamers from the United States to Brazil last year is entirely incorrect.

Q. Not right? A. Entirely incorrect.

Q. Were there more than six tramps put on the berth here that went to Brazil? A. Tramps don't go on the berth. I am talking about full cargo lots.

Q. Well, these cargoes that went from here, there—— 4409
A. I don't understand your question.

Q. There is evidence here of six charters of tramps, as I recollect, all told? A. I say that evidence to the effect that there were only six tramps loaded from the United States to Brazil in 1912 is entirely incorrect.

Q. From New York? A. I was not talking about New York. You asked me for the total trades, how much per cent. of the total trade?

Q. I will put the question again. What percentage of the total trade do the conference lines get from New 4410
York, and what per cent. does the Lloyd get? A. You are talking now about the berth trade?

Q. I am talking about any kind of trade from New York to Brazil? A. I can only answer you specifically on the berth trade.

Q. Well, what do you mean by that? A. About 50% of it.

Q. And the two combined, would they only equal 50% of the whole trade? A. The total freight trade from the United States.

Q. How about from New York? A. I have already told 4411
you I can't divide the full cargo lots from the berth lots in New York.

Q. Then you are not able to state what the ratio is between New York and Brazil? A. No.

Q. What other points have you in mind that there was tramp tonnage from other than from New York in 1912? A. Norfolk and the Gulf.

Q. Do you know how many sailings there were of tramps from those ports in 1912? A. No. Quite a large volume.

Q. What was the commodity? A. Coal and lumber. 4412

Q. Does coal go from New York? A. No.

Q. Then, so far as the conference lines and the Lloyd Line are concerned they don't transport coal at all? A. I don't know what the Lloyd do; we don't.

Q. You know the conference Lines do not? A. They do not.

Q. You spoke on one of the previous days in your examination you said that your line had either contemplated or were contemplating inaugurating a passenger service again. Did I get that right? A. No, I think you did not.

Q. Well, what was it? A. You asked me why they built

4413 passenger steamers for the Brazil trade if they were not carrying passengers. I said I presumed they intended going into it again some day.

Q. Upon what do you base the opinion that you think they intend to go into it again? A. The fact they put passenger accommodations on their steamers.

Q. You mean on the same steamers that have been operating they had either rebuilt the boats or made changes in them so that they could accommodate passengers? A. No; we built new boats.

4414 Q. How many new boats have they built? A. Four or five.

Q. And in those four or five they are now all appropriate for carrying passengers? A. A certain number, yes.

Q. But they don't do it? A. At present, no.

Q. Do you know why they don't? A. No.

Q. Do you know why they abandoned the passenger service in the beginning? A. I think it was because gasoline was better, but I am not positive about that; I have no positive knowledge.

4415 RE-CROSS EXAMINATION by Mr. Spooner:

Q. In answer to my question as to the effect of competition in the business of the conference, did you have in your mind the limited temporary competition or continued competition? A. There is no possibility of continued competition; it is either conference or not. Competition will not last forever.

Q. Well, the competition must continue long enough, I suppose, to develop the superiority of somebody? A. It is to drive out the weaker systems.

4416 Q. That is what you meant? A. Yes.

Q. Did you in this enterprise of yours down there learn of any agreement between the Ward Line and the Munson Line as to the division of ports in Cuba? A. No. I have no exact knowledge about it at all.

RE-RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Well, this freight business has been continuing for a long time as an automatic trade without monopoly or anybody being driven out, has it? A. Each line has it own ports to serve.

Q. Whether it has or not they still exist, do they not? A. 4417
The conditions are so different. They are in competition.

Q. Well, in any event there are some boats that go to German ports. For instance, between New York and Germany there is the North German Lloyd and the Hamburg Line, isn't there? A. Yes, the North German goes to Bremen and the Hamburg Line goes to Hamburg.

Q. And they both carry freight, do they not, to be distributed throughout the German Empire? A. They do.

Q. And they are not in conference? A. They are not, so far as I know. 4418

Q. That has been continued for a considerable period of time, without either one being driven out? A. No, they have both been running a good long time.

Q. And increasing the size of their boats and the facilities of the service? A. I know very little about them.

Q. And between here and the English ports there are a number of lines serving now in the freight trade, are there not? A. There are.

Q. They have been carrying on that business without conference for quite a long period of time, haven't they? 4419
A. Yes; each go to their own particular port.

Q. And they distribute goods in the United Kingdom, don't they? A. I don't know anything about it.

Q. And they have developed the service over there to more home ports, haven't they now? A. More what?

Q. More home ports. They have increased the number? A. What do you mean by home ports?

Q. Where they land? A. Their home ports?

Q. Yes? A. I don't know.

Q. In any event, you have enough general knowledge of 4420
the operation of the North Atlantic service to the United Kingdom to know it has been in existence for a large period of time and the quality of the service has uniformly increased? A. I have testified they are the best boats in the world.

Q. And none of them driven out so far as you know? A. I daresay, but I have no knowledge of it.

Q. Isn't it true that some of the German boats also land freight at other places than in the German ports at Hamburg and Bremen? A. I don't know.

4421 RE-RE-CROSS EXAMINATION by Mr. Kirlin:

Q. Isn't it a fact that the difference between the North Atlantic trades and Brazil trades which make comparisons between them inapt due to the fact that the great trans-Atlantic Lines are supported primarily by the passenger trade? A. I have been given so to understand.

MR. BALDWIN: I move that be stricken out.

Q. It is a matter of ordinary observation, isn't it? A. A matter of general knowledge.

4422

MR. BALDWIN: I move to strike that out, as not based upon any knowledge he has first hand.

Q. The North German Lloyd has certain ports and the Hamburg Line has certain other ports, hasn't it, in the freight business? A. That is correct.

Q. And its discharge for freight? A. Yes.

Q. There are some lines with ports in the United Kingdom that are primarily freight lines, are there not? A. Yes.

4423 Q. The Bristol City Line? A. Yes.

Q. The Wilson Line? A. Yes.

Q. The Anchor Line? A. Yes, the Anchor Line carries passengers also.

Q. In minor numbers? A. I don't know about the numbers. They do carry passengers.

Q. There is no competition for either one of those three lines, is there, to their home ports? A. Not that I know of.

Q. The Cunard and White Star Lines are primarily pas-
4424 senger lines? A. Yes, sir.

Q. Is there any such passenger business between here and Brazil as would enable lines to develop the kind of business the North German Lloyd, Hamburg, Cunard and White Star Lines develop between here and their home ports? A. No. The passenger movement from here to Brazil and back is very little.

Q. So that there is no real comparison? A. No comparison possible.

Q. Between those trades and Brazil? A. No comparison possible.

RE-RE-DIRECT EXAMINATION by Mr. Baldwin: 4425

Q. What lines have you mentioned that are engaged in the freight business separate and distinct from passenger business to the United Kingdom? A. The Bristol City Line and the Wilson Line.

Q. Are they in conference? A. I don't know. They serve different cities of the United Kingdom.

Q. The United Kingdom is not such a very large country, is it? A. It is.

Q. Do you pretend to know where either one of these lines distribute their freight finally? A. I do not. 4426

Q. So that as far as you know both lines might have a large amount of their shipments destined for the interior towns or counties in the United Kingdom? A. Yes, but not in the same district.

Q. So far as you know? A. I know the railroad situation well enough to know that they would not load a cargo for the vicinity of Hull to Bristol.

Q. Aren't there any of the steamers that also carry passengers that run freight in the same territory that these lines do? A. No. There is no passenger line either to 4427 Bristol or Hull that I know of.

Q. You mean Bristol, that is up in the Bristol Channel? A. Yes.

Q. 82 miles from London? A. A great deal more.

Witness excused.

J. J. SLECHTA called on behalf of the Petitioner, being first sworn, testified as follows: 4428

DIRECT EXAMINATION by Mr. Baldwin:

Q. Where do you reside? A. My legal residence is at Patchogue, New York.

Q. Are you engaged in business here? A. I am.

Q. In what capacity? A. Agent of the Lloyd Brazileiro Steamship company.

Q. How long have you held that position? A. Since December, 1911.

Q. Where do they have their offices here? A. At the present time 17 State Street.

4429 Q. And where do they dock? A. At the Bush dock in Brooklyn, pier five.

Q. How near is that to where any one of these conference line boats dock? A. It is right in the same neighborhood. We have them on either side of us.

Q. The Bush docks are docks owned by a private corporation? A. The Bush Terminal Company.

Q. And they lease parts of them to various parties? A. Yes, sir.

Q. By the year? A. Yes.

4430 Q. Prior to the time that you were appointed to the position you now occupy with the Lloyd Brazileiro where were you living? A. I was at Rio de Janeiro.

Q. And were you residing there in any capacity? A. I represented the United States Government in the capacity of Assistant United States Vice-Consul.

Q. And how long did you occupy that position? A. Approximately five years. I have been a little more than that time when I left.

Q. Were you living there continuously for five years?

4431 A. Yes, sir. I was home on a vacation for a short time twice.

Q. On what we call the consulating of merchandise for American ports, do you have any of that come under your supervision? A. Everything that was shipped from the Port of Rio de Janeiro to any port in the United States in excess of $100 in value has to be shipped on a consular invoice and all the consulates from the other ports reported to our office as to the quarterly returns of shipments made in the same way.

4432 Q. Well, I ask you if any of that was done under your immediate supervision? A. Almost altogether under my personal supervision.

Q. So that in that five years you were able to familiarize yourself quite thoroughly with the amount and character of the shipments from Brazil to the United States? A. It was my duty to do so in that capacity as well as in the making up of freight statistics and the study of various questions relating to Brazil and the United States generally.

Q. And part of your duties was at times to make reports to your Government on the conditions of the business there? A. Yes, sir; which I did.

Q. And that also involves, I presume, the volume of business from Brazil to the United States and the volume of business that arrived there. Did you have anything to do with that? A. Yes, both with reference to the trade between the United States and Brazil and Brazil and other countries. 4433

Q. So that you have more or less of an intimate acquaintanceship with trade conditions in Brazil in that five years? A. I tried to have, yes, sir.

Q. Now, during your time what was the principal commodities shipped from Brazil to the United States? A. It has been practically the same for the last twenty years or even longer. During my time it was, as it is now and has been for a quarter of a century, perhaps, and from the southern portion of Brazil it is, by the southern ports meaning the coffee ports, Rio, Santos and Victoria, practically coffee exclusively; from the very southernmost ports of Rio Grande, Port Allegre, there are a few hides come to the United States; from the middle ports, such as Bahia, being the principal export port for coffee and some hides, dry hides and salted hides; Pernambuco there is an occasional shipment of sugar, a very occasional shipment of cotton seed and of skins, goat skins and sheep skins, and from Ceará and from other small ports along the coast there are occasional shipments of hides, some medicinal products; from Pará there are some shipments of rubber with a considerable amount of Brazil nuts. That constitutes practically the principal exports from Brazil to the United States. 4434 4435

Q. Now, what proportion of the total exports of Brazil does coffee bear? A. In bulk it bears approximately 90%; that is in bulk, not value. 4436

Q. What does it bear in value? A. In value it fluctuates according to the price of coffee and other commodities, but it generally is about a half; sometimes more than a half; at the present time it is considerably more than half because of a slump in rubber.

Q. Well, what proportion does it bear in freight—I mean to say in the value of freight? A. In the receipts of freight earned?

Q. Yes? A. I never have gone into it to draw up those figures scientifically, but I should say that roughly speaking the amount of freight earned in carrying coffee

4437 amounted to 80% of the total, possibly 85; it is surely not less than 80.

Q. 80 you say? A. 80%. That is speaking of the United States. That may seem inconsistent, but the freight rate on rubber and some other commodities is relatively much higher than on coffee.

Q. This is the freight earned, you say, as to coffee, is about 80%? A. I should say so.

Q. And the balance then includes the freight on rubber? A. Yes, freight on rubber. That is merely an estimate,
4438 of course; I don't want to be held responsible for it.

Q. When you were in Brazil do you know whether or not there existed a system of paying the shipper rebates by certain lines? A. There was.

MR. KIRLIN: This is subject to our outstanding objection?

MR. BALDWIN: Yes.

THE WITNESS: It was a matter of general information that that was the case.

4439 Q. That general information was general in fact, wasn't it? A. Yes, among all individuals who had anything to do with such a question as that.

Q. How long had that rebate system been in existence, so far as you know? A. Since 1908 that I know of.

Q. Well, was there a rebate system in force and effect there with reference to shipments to Europe? A. That was my understanding. I had seen at various times while I was in Rio copies of agreements which had been entered into by steamship companies trading to Europe and to the United States to that effect.

4440 Q. Well, now, was that rebate still effective when you were down there representing the government? A. Yes, sir.

Q. And it was from time to time made a part of your business to ascertain the condition of that and report to your government? A. Yes, sir. The Consul General reported to the State Department as to that.

Q. And during that time there was a system of rebates, too, was there, to Europe? A. Yes, sir.

Q. Were you down there prior to 1907? A. No, I was in Rio in the fall of 1907, beginning from that time on.

Q. Now, do you know what lines were involved in that

rebate business? A. The North German Lloyd, the Ham- 4441
burg-American Line, the Hamburg-South American, the Royal Mail Steam Packet Company, the Pacific Steam Navigation Company and——

Q. Was there a French Line? A. Not to my recollection; my recollection is not clear.

Q. Well, is it clear as to the others? A. Yes, sir. And the Lamport and the Prince Line.

Q. Now, those lines are all regular lines, are they not?

MR. KIRLIN: Is that in Europe?

THE WITNESS: They are all part of the same 4442
agreement at the same time.

MR. KIRLIN: You don't mean the Prince Line was trading to Europe?

THE WITNESS: No.

Q. To make that clear, is it not your purpose to state the Prince Line was engaged in the trade from Brazil to Europe? A. No, sir.

Q. How about the Lamport & Holt? A. That was a general—they did not as a rule carry cargo from Brazil to Europe, occasionally they did. 4443

Q. All the other lines did? A. Yes, sir.

Q. Was it or was it not a part of the information that you obtained down there in your official capacity that these rebates were allowed upon the understanding that the shippers would confine all of their shipments to these conference lines; that is to the conference lines between this country and Brazil and between Europe and Brazil and return? A. I was told that that was the case by some of my friends in the coffee business there.

Q. Is it a matter you investigated to ascertain? A. Yes, 4444
I made it my business to investigate it.

Q. Was this about the time you saw the circulars there when you made these investigations? A. Yes, sir.

Q. And these rebates that you speak of were in pursuance of this notice or upon those of like nature that were sent to shippers? A. That is what I had in mind. The copies—I had the copies that had been furnished to the coffee companies by the steamship companies.

Q. I show you Exhibits 11, 12 and 12, 123 and 124. Can you state whether or not those notices to shippers were in substance the same as those exhibits I now show you? A. The copies of 11 and 12 were shown to me at that time.

4445 The others I am not familiar with. I say I am familiar with them. I obtained them in 1911, although I had seen them before that time, but I obtained copies of them at that time and sent them to the Government.

Q. Do you know whether the coffee business from Brazil to the United States and to Europe was in the hands of any large number of men, or a small number? A. You ask whether——

Q. I will put that in a little different form. How was the coffee trade all through the United States and Europe
4446 handled so far as the number of large shippers that practically controlled it? A. The number of shippers compared to the large quantity of exports is relatively small in all ports, although there were a larger number of small shippers in Santos than in Rio, but a very large majority of the entire shipments are confined to, I should say, not to exceed eight shippers in Rio and probably ten in Santos. I can name a—the largest ones, certainly.

Q. Give us the name of some of those shippers, beginning with Rio first and then Santos? A. The three largest shippers, the order of which I am uncertain about,
4447 are Theodore Wille; Arbuckle & Company (Arbuckle Brothers here); Hard, Rand & Company. Then there are McLaughlin & Company; Carlo Parezo & Company, an Italian firm; Ornstein & Company. Those are probably the largest ones. Crossman & Company, Mr. Cross, the full name of the gentleman I don't know.

MR. KIRLIN: Of Rio?

THE WITNESS: Yes, sir. The largest ones from Santos are the same as the ones I have just indicated
4448 from Rio, are Theodore Wille & Company; Hard, Rand & Company, and Leon Israel. Leon Israel also ships from Rio, but not under their own ame.

Q. What name? A. They buy there from various brokers. At least, that used to be the case.

Q. I show you Exhibit 123, copy of Supplementary Notice to Shippers From Santos and other ports, having a number of names there. For instance, E. Johnson & Company, Limited? A. Yes, sir. They ship almost exclusively to Europe.

Q. And Zerrenner Bulow & Company. Are they shippers? A. I recognize those as shippers from Santos.

Q. Are they agents for any of these lines? A. I under- 4449
stood so at that time. I could not speak with any authority with reference to Santos because I have no familiarity with the condition.

Q. On the third page of this exhibit there is the name of Naumann, Gepp & Company? A. Yes.

Q. Santos? A. Yes.

Q. And Michaelson, Wright & Company? A. Yes, sir.

Q. Santos? A. I recognize that name, yes, as an individual shipper there.

Q. Holworthy, Ellis & Co.? A. I know them. I know 4450
the members of the firm quite well.

Q. Are they some of these shippers you mention in Santos? A. Yes, sir.

Q. Raphael Sampaio & Company? A. No, I am not familiar with them.

Q. Prado Chaves & Co.? A. I am not familiar with them.

Q. Take this exhibit and state the ones there that you know are coffee shippers from Santos? A. Naumann, Gepp & Co.; Michaelsen, Wright & Co.; Holworthy, Ellis 4451
& Co.; Prado Chaves & Co.; Krische & Co.; Hard, Rand & Co.; Schmidt & Trost.

Q. Now, do you know whether or not in 1907 rebates from—any rebates were being paid to the United States when you went there? A. I could not testify in reference to that. My recollection is that the new agreement went into effect in 1908, and what the form of agreement before that was, and the arrangement of rebates I don't know.

Q. Did you ascertain whether or not——

4452

MR. KIRLIN: What were the years you went there?

THE WITNESS: I arrived there in late September, 1907.

Q. Did you ascertain when you were getting this information to make your consular report in reference to rebates how many or what proportion of the shippers down there were tied up with this rebate system? A. I knew of various ones who were and of some who were for a while and dropped it and others who eventually went back again.

4453 Q. Well, were they pretty generally tied up to it or not? A. In 1908——

MR. KIRLIN: We object to the characterization.

MR. SPOONER: It is entirely leading.

THE WITNESS: It was generally understood and I knew as a matter of fact from watching the consulating of invoices, which shippers shipped exclusively over those lines, certain shippers.

Q. What proportion were they of the number of ship-
4454 pers that shipped coffee, we will say, that shipped exclusively over the conference lines? A. You mean what proportion of the number of shippers?

Q. Yes. A. Meaning a period, of course, at different times in 1908 and 1909?

Q. Yes. A. I should say that in 1908 probably a great majority of them shipped exclusively.

Q. And after that? A. After that they were increasing in a large proportion.

Q. Up to the time you left there? A. Up to the time
I left, when practically all, with the exception of Arbuckle
4455 were shipping by the conference lines.

Q. Now, you testified as to the proportion of coffee carried from Brazil; what proportion of the freight carried from New York to Brazil on your line is made up of bulk or heavy cargo; I mean the Lloyd Line? A. Well, I never have tabulated those figures so as to be able to speak of them exactly to you, but I should say that certainly 90% of the cargo might be regarded as bulk freight, bulk commodities, certainly not less than that.

Q. What is the reason for the fact that the bulk cargo is such a very large proportion? A. Well, in the first place,
4456 the commodities which are in demand there are in proportion much larger than the more general cargo. Naturally there is more kerosene oil used than there is of canned goods, for instance, we will say. So it is with other commodities. And, on the other hand, the steamers from all the European countries are so much faster and so much more regular and frequent that they naturally, meaning the European countries, get the preference on all that class of cargo.

Q. You mean cargo other than bulk cargo? A. Yes.

Q. Sometimes called high class or package cargo? A. Yes, sir.

Q. Now, what proportion, if you are able to state, of the bulk cargo trade from here to Brazil is carried, as between your lines and the conference lines, is carried by your line? A. I should have to guess at that. I guess the conference lines know more about my business than I know about theirs. I am really unable to say. I know we have had very large contracts for bulk material, and I know of bulk material that goes in large quantities over the so-called conference lines, but I really could not say what proportion has been carried. 4457

Q. Do they get more of this high class trade or package trade than you do? A. I think that applies almost altogether to the Lamport & Holt. I doubt very much whether the other competitors get more of package trade than we do, with the exception of ports to which we do not send. We do not as yet compete with Hamburg-American. They do a great deal of package trade or presumably so to the south ports of Brazil—Maceio, Porto Allegre, Sao Francisco and Rio Grande. 4458

Q. Do they serve those ports direct? A. Yes, sir.

Q. Is there a large amount of merchandise that goes for what we call the small ports other than those that are transshipped by Rio? A. Do I understand you to ask if there are large quantities of cargo transshipped at Rio to these other ports? 4459

Q. Yes, the smaller ports.

MR. KIRLIN: You mean the cargo that they carry?

MR. BALDWIN: No; generally speaking.

THE WITNESS: I know of cargoes that Lamport & Holt carry, considerable quantities. I don't know how large. They carry cargo and presumably in sufficient quantities to make it pay to bother with it for transshipment to south ports from Rio. 4460

Q. Isn't there a line that makes it a business of carrying freight consigned to these smaller ports? A. A line trading on the coast of Brazil?

Q. Yes. A. Yes, sir. There are two—at least two to the south ports of Brazil, and two or possibly three to the north ports of Brazil.

Q. And is it not also true that quite a large amount of merchandise that goes to these ports is required to be transshipped at Rio on one or all of those lines? A.

4461 There are very few transshipments to north ports from Rio, that is, if you mean north of Bahia. We make that ourselves. We carry cargo to Rio for transshipment to Aracajo, which has no service otherwise from the United States, and its draft of water, the depth of water, is altogether too shallow for our vessels.

Q. Are there any other places? A. The last two years our boats carried a great deal of cargo for shipment to south ports in Brazil.

Q. Your own company? A. Yes. We carried and trans-
4462 shipped by our coastwise vessels to the southern ports—all or any of them—wherever occasion demanded.

Q. Merchandise that came from the United States? A. Yes.

Q. Do you know what lines it came by? A. By that I mean they went on the Lloyd Brazileiro from New York to Rio and transshipped from Rio to these other ports on our own vessels. We do that now where there is any demand for it.

Q. Now, since you took charge here of the Lloyd Bra-
4463 zileiro Lines how many sailings have you been maintaining from here on the average? A. Well, I have been here practically since the first of 1912, and in 1912 we had 32 steamers loaded in 1912. One of them did not sail until after the first of January, 1913, but there were 32 loaded in 1912.

Q. Has it been a part of your practice to have more or less regular sailings? A. Yes, sir. It was our practice and intention and we adhere to it as closely as possible—sometimes it was not possible—as a general thing we had
4464 two sailings a month to ports of Pernambuco and Rio and Santos and Natal, sometimes two sailings to Bahia and usually one—one and then intermediate sailings—usually about one a month to the ports of Natal, Cabedello, and Maceio, covering the ports of Natal and Cabedello every other month, which was as I recollect. We had six sailings to the Port of Natal in 1912; 7 to Cabedello and 11 to Maceio (called Parahyba).

Q. Now, as a part of Exhibit 212 furnished by Mr. Gerhard, there is one page given up to the steamers despatched by your company to various ports in Brazil. Will you look at it and state whether that is correct for 1912? A. I can't say without comparing it, of course, but

it seems to be correct. I can tell by counting, if the ports 4465
are correct. This seems to be correct. This is a correct number of sailings, but the ports I could not say. It strikes me they have left out one or two ports.

Q. And these sailings seem to be correct? A. Yes, sir.

Q. I notice in January you had four sailings, one on the 3rd, another on the 4th, another on the 10th and another on the 20th; and in February you had three, on the 2nd, 6th and 21st; while in March you had but two? A. Yes.

Q. Do you know the reason for having only two in March? A. As a matter of fact, that first boat, the *Acre* 4466
is a small boat sent up here to be repaired in the New York yards and take cargo only incidently, so far as Rio is concerned. I presume there was not sufficient cargo offering for the north ports to warrant us putting in a steamer for that port, and otherwise we had two or three steamers in that month for the south ports.

Q. In March there is the *Tocantins* and the *Tapajoz*? A. Yes, sir.

Q. And in April you have three sailings? A. Yes.

Q. And again you have four in May? A. Yes. 4467

Q. While in June you have two and July two and August three again? September two and October three and November one and again in December you have two. Now, will you state what caused the number of sailings where there were three and then again when there were two and one? A. Usually when we started steamers to supplement the sailings by our own vessels it is our intention to have a sailing, to arrange for a sailing for a certain half of the month, we have chartered steamers but it is impossible to charter without giving the owners a certain latitude of 4468
dates, given dates between which they can deliver the steamer to us, and sometimes it happens they suit their own convenience a good deal more than they do ours, in which case it is difficult to fix the sailing exactly when we want it.

Q. How many of the boats in 1912 were chartered? A. I have made up a statement of that which I haven't with me as yet. I can tell you approximately for a fact it is either 16 chartered and 15 of our own or vice-versa. Another thing that would cause that irregularity, if you want to call it that, of the number of sailings, would be that frequently we have a request to care for a very much larger

4469 amount of cargo, and we would make a special charter in order to fill that engagement.

Q. What is your practice and intention with reference to the number of sailings per month? A. We sail just as many as we can reasonably fill and do it without too great a risk; I mean to say, without cutting the rates too much to fill them.

Q. How near, averagedly speaking, do your sailings conform to your dates advertised for sail or made public in any way? A. Well, they vary considerably at times, but
4470 when we find that it isn't possible for us to have a ship make the sailing for which she is advertised, at least to make the half of the month for which she is advertised, we charter a boat to take her place, and of course, it is a matter of indifference to the shipper as a rule what the name of the ship is or the character of cargo which we carry. At least, we have never had any complaints about the transfer of the steamers.

Q. Now, do you have shipments that are booked for the first half and shipments booked for the second half? A.
4471 Yes. Almost all of our engagements being on long contractual—that is to say a period of six months or a year —long contracts, are made in that way to large shippers.

Q. What is your practice with reference to having shipments sent in the part of the month that they are booked for? A. We have not fallen down on that many times. We have fallen down on it sometimes. Sometimes it happens as it did with our friend Mr. Sparks, of the Theodore Wille, but——

Q. You make it a practice of getting merchandise out in the half month that they are scheduled for? A. Yes, sir.
4472 Sometimes the sailings—the ship is not able to get away. For instance, we have an illustration of it right here in a steamer held up by a strike, and she was booked for the first half of this month and did not arrive within five days of when we expected her, and on all such engagements she arrived soon enough so we could issue the bills of lading covering the half of the month required and sail as soon as loaded, which we hurried with all possible despatch.

Hearing adjourned to Tuesday, June 17th, 1913, at 10.30 A. M.

NEW YORK, June 17, 1913. 4473

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER; by Charles Burlingham, Esq., and Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*

MESSRS. SPOONER & COTTON; by J. C. Spooner, Esq., for Paul Gottheil, *et al.* 4474

MESSRS. CONVERS & KIRLIN; by J. Parker Kirlin, Esq., M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

J. J. SLECHTA, recalled.

DIRECT EXAMINATION continued by Mr. Baldwin:

Q. Mr. Slechta, how do the rates of the Lloyd Brazileiro Line on all freight from New York to Rio, Brazil, compare with that of the conference lines? A. In general, so far as my experience has been we have determined our rates pretty largely by following the rates of the conference lines on most commodities. The rates have been approximately the same except in a great majority of them we have shaded the rates just sufficient to give the shippers inducement to give the cargo to us. 4475

Q. When you say shaded you mean that you made them lower? A. Yes. I ought to say in that connection that in general cargo I would say that our rates were considerably lower because we have, of course, made a special effort to get that class of cargo rather than to run so much of it bulk, cargo. 3476

Q. What do you mean by general cargo? A. By general cargo we usually mean measurement and package cargo —I should say package cargo.

Q. Do I understand in the use of the term general cargo you mean package cargo, then? A. Yes, that is what we mean when we say general cargo.

Q. And in that class of trade you are considerably lower? A. Yes, particularly lower than the Lamport & Holt. As a matter of fact we have made shipments of commodities of that sort in many cases for shippers who

4477 have been accustomed to ship by the Lamport & Holt, because of their special service, regular sailings, twice a month or once every two weeks, and making a comparatively short run of eighteen days. We have booked cargo of that sort I say in spite of the fact that our service is slower, but because our rates were so much lower that it made a considerable difference to the shipper.

Q. Then you use as a basis of determining your rates the rates quoted or in force by the conference, marking yours down to such a point as—— A. There are excep-
4478 tions to that.

Q. Well, generally speaking? A. Generally speaking, that was the case—that has been the case.

Q. What are the exceptions? A. The exceptions are relating to classes of cargo on which the rates were exceptionally high on the conference lines, at least comparatively so, and with reference to commodities which have heretofore been shipped almost exclusively from Europe. Cement is one commodity in point. Very little cement has ever been shipped from the United States to Brazil until this past year.

4479 Q. What do you base that rate on? A. Well, we got all we could get and in order to get the shippers' business; in other words, we put the rate as low as we could possibly put it and still see a litle profit in the carrying of it in order to enable the shipper to get the business away from Europe to him.

Q. In that way the rate on cement is considerably less than the conference rate? A. That is as I understand it. I do not know officially about any rates they may offer.

Q. You ascertain through the trade, do you, from the
4480 shipper? A. We are told by the shippers, who, of course, would be willing to take advantage of good rates over whatever line they were offered that were considerably lower.

MR. KIRLIN: We object to this testimony of comparison of rates by the statements of shippers. The best evidence would be the production of the rates themselves. Our rates and tariffs are in and the best evidence of comparison would be for the Lloyd Brazileiro rates and tariffs to be put in.

Q. What was your rate in May for cement? A. $6.20.

The early part of the month, and I believe—I haven't any 4481
record of that—but at that time, about the latter part of the month, we made some reduction in the quotations, various quotations.

Q. Did you go down on cement to $5.80? A. Yes.

Q. Is that with reference to the Hesslein shipment? A. We made one quotation of $5.80 to Neuss-Hesslein.

Q. Do you remember when that was? A. It was the last week in May, if I am not mistaken.

Q. Do you know whether or not that $5.80 was less than the same party had quotations from the conference lines, 4482
or any of them?

MR. KIRLIN: We object to any hearsay statements on that subject.

Q. Do you know? A. Mr. Saumenlicht told me that he had a rate of $6.

MR. SPOONER: Move to strike it out.

Q. Did you know before that, just before that, whether the conference rate was any higher than $6? A. During 4483
the most of 1912 the rate had been not less than $7.20; as a matter of fact we had not made any quotations below $7.20 ourselves until this offer that made it worth while to cut. At that time we reduced our rate first to $7, and we booked some, in fact we booked some at $7.20, and a larger quantity at $7, and we booked other incidental shipments at, I think, $6.80 and $6.50; various rates from $6 up to $7.20, that is, to Rio and Santos, and then in March—at least in the spring, I am not certain of the date, of course, I have a record of that, but in about 3484
March we booked 90,000 barrels at $6.20. That was the first big contract which had ever been carried over a regular line to Brazil. That is American cement.

Q. That was the first large one; how many tons you say? A. It would be approximately 15,000 tons.

MR. SPOONER: At $6.20?

THE WITNESS: At $6.20.

A. (Continuing.) And it is right in connection with that rate note should be made of the fact that that meant we took the cargo from Jersey City, in that way saving

4485 the shipper approximately 40c. a ton in lighterage charge —at least 40c. and probably 50c. in a great many cases.

Q. Can you think of any occasion where the Lloyd Brazileiro made a contract for any merchandise 10,000 tons or over?

MR. KIRLIN: We object to the evidence of these contracts, oral evidence; the writing would be the best evidence.

A. We have two contracts for 90,000 barrels of cement
4486 each and we have had contracts from time to time for shipments up to 2,000 tons of rails and structural material within a few months, aggregating probably at least 10,000 tons within eight months; and we have had contracts covering shipments of kerosene oil which aggregate 10,000 tons in a year. Those entire shipments were not covered by one contract, however.

Q. You have got facilities to take care of contracts for 10,000 tons a month? A. 10,000 a month?

Q. Yes. A. Well, we carry more than 10,000 tons a
4487 month, yes.

Q. You could, if you had contracts offered you, you could take care of them all right, couldn't you? A. Yes. There is another contract we have had during the past year, one for car material, aggregating 12,000 tons.

Q. And for who is that? A. The Middletown Car Company.

Q. Mr. Gerhard of Funch, Edye & Company testified at page 1327 of the record that shippers like Plummer and the Steel Company shipped large quantities; they come into the market sometimes with 10,000 tons of rails to be
4488 shipped in one month. No one line would dare to assume that contract, but the three lines get together and divide it up and take it. If you had the opportunity of taking contracts of that kind could you handle it? A. We have solicited Mr. Plummer's business.

Q. And you could do it? A. Yes.

Q. Does your line pay rebates on shipments? A. No, sir, not since my connection with the company. If you care for the history of what I know about it I can tell you very briefly. You are speaking at the present time?

Q. Yes. A. No rebates of any sort.

Q. Do you know whether or not that there is anything

in the laws of Brazil with reference to that? A. It is contrary to the policy of the Brazilian Government to allow this line to pay rebates. 4489

MR. KIRLIN: I object to that.

Q. Is there anything in the Brazilian law or their policy with reference to——

MR. KIRLIN: We object to this as not the best law.

MR. SPOONER: And improper and incompetent.

Q. Do you know whether or not the charter of your line prevents it from going it any conference? 4490

MR. KIRLIN: We object; the charter is the best evidence.

Q. Go ahead and answer the question. A. So far as I know there is nothing in the charter of the company which would prevent it from giving rebates.

Q. No, I am speaking about going into a conference?

MR. KIRLIN: Same objection. 4491

A. That also with the exception that there is nothing in the law or in the charter that would prevent the company entering a conference, but there is a section in the Brazilian Budget Law of 1912 which would make it certainly a very dubious question whether they could do so. I can furnish you a copy of that law with the section and citation if you wish.

Q. I wish you would do that——

MR. MONTGOMERY: And the section of the charter. 4492

A. That is impossible. I have not a copy of the charter. That law that I refer to is a law which places a penalty, a double penalty in a way upon any steamship company which discriminates by giving rebates against domestic products entering into foreign trade.

Q. How does your amount of freight that you carry from New York compare with the amount that you get from Brazil to New York?

MR. BURLINGHAM: You might give the figures and then we can compare.

4493 A. I have given some of those figures, Mr. Baldwin; I am compiling the remainder.

Q. Generally speaking, do you have more cargo down than you have up? A. The ratio is about 20 to 1.

Q. You go out with comparatively full cargo? A. Since my connection with the company and in fact for the year preceding that the cargoes from New York have been invariably complete cargoes.

Q. How about return cargoes? A. The steamers that return from Brazil either in ballast—in the great ma-
4494 jority of cases in ballast or with part cargo in a few cases, and in very few cases with a comparatively full cargo.

Q. What does the cargo consist of that comes back? A. Consists of coffee shipments for Arbuckle only.

Q. What is the reason you come back either in ballast or with very light cargo? A. Because it has been impossible to obtain any return cargo from other shippers than Arbuckle.

Q. For what reason?

MR. KIRLIN: We object to that as speculative.

4495

A. There isn't very much speculation about it, I am afraid.

Q. Have you any general idea or knowledge of it?

MR. KIRLIN: Object to the general knowledge.

A. I was not going to express any general ideas.

Q. State it in your own way what is the cause? A. I personally have solicited business from coffee importers, shippers who ship on a large scale in New York, and was
4496 told that by virtue of an arrangement which they had with the steamship companies it is impossible for them to ship by the Lloyd Brazileiro.

MR. KIRLIN: I move to strike out what he was told by the shippers as incompetent.

Q. What arrangement; with reference to what? A. I have in mind one shipper particularly who told me that he——

MR. KIRLIN: We object to any conversations as hearsay.

A. (Continuing.) That the rebates which had accrued

on his business amounted to so much that were he to ship by us his right to the rebate would be lost and he would lose much more than he would save for some time in shipping at a much lower rate, and not only that, but that he would lose the rebates on shipments to Europe from Brazil. 4497

MR. KIRLIN: Move to strike out any statement as to rebates.

Q. Who is that? A. Leon Israel of Loen Israel & Company. 4498

Q. Was he referring with respect to the loss of rebates; did he mention or was it understood that he referred to the conference lines that he would lose the rebates from? A. Yes.

MR. KIRLIN: Same objection.

MR. SPOONER: Objected to also as leading, intensely leading.

THE WITNESS: I had not finished with my answer to the question. 4499

Q. Go ahead. A. In discussing the matter with my principals by correspondence——

MR. KIRLIN: I object to that as incompetent.

A. (Continuing.) My principals in Brazil, I have been advised from time to time that they have been unable to secure the return cargoes of coffee from Rio and Santos because of the rebate arrangement which the conference line had with the shippers from those ports.

MR. KIRLIN: Move to strike out that testimony as incompetent. 4500

A. (Continuing.) I can furnish copies of the correspondence, if you wish.

MR. SPOONER: It would not be competent if you did.

Q. In order to get business there from Brazil here, did you quote lower rates than the conference were quoting?

MR. KIRLIN: We object to that unless the rates are stated.

4501 A. Soon after arriving in New York to take charge of the company's business here I began regularly advertising the rates of coffee freight, and I think for approximately seven or eight months they were advertised every day in the Journal of Commerce, and those rates were 26c. minimum to 32c. maximum per bag.

Q. Do you know what the conference rate was at the same time? A. I think on the 15th of October or during that time they were 45c. and 5%; after that time they were 50c. and 5%.

4502 Q. Then in spite of the fact that you advertised continuously at those rates you were unable to get return cargo excepting from the Arbuckles, is that right? A. Yes. We had one shipment of a few hundred bags from F. J. West & Company, who was able to make the shipment by the Lloyd Brazileiro because he was visiting Brazil on his own account and made this arrangement to ship by the Lloyd Brazileiro, and without invalidating the rebate arrangement which his regular shipper had.

Q. Now, I asked you a moment ago about contracts
4503 that you had made for 10,000 tons per month or more; have you got any contracts with you? A. I have contracts with me. I don't know that I brought those particular ones. These are more or less typical contracts, which I have taken at random during as far back as our fil s are complete with the contracts. Owing to the change of agency the contracts have not all been kept on file. Here is one for a shipment of 10,000 to 15,000 cases of kerosene for the month of January——

Q. Don't read it; let me have it. A. Here is another large one (producing). These contracts speak for them-
4504 selves. A number of them are originals and some of them copies. I suppose, of course, that you will keep them to be returned eventually.

Contracts produced by witness marked Petitioner's Exhibit 232 for identification.

Q. Prior to 1908 was there a regular line of steamers from Rio to Cabedello, Maccio, Victoria, Sao Francisco do Sul, Desterro, Rio Grande do Sul and Antonina? A. Yes, for a good many years, I don't know how long before, but for a good many years prior to that date there was a regular coastwise service to those ports.

Q. And was freight destined to these points from New 4505
York transshipped at Rio and carried forward? A. Not to all you have mentioned.

Q. To some of them? A. Yes.

Q. Is that line of steamers still running? A. Yes.

MR. KIRLIN: What line is it?

THE WITNESS: The Lloyd Brazileiro Coastwise service, the Campania Commerciale Navigacaõn, meaning the Commercial Navigation Company, is another.

4506

Q. How do your facilities for loading and unloading cargo and handling merchandise shipped over your line from New York to Brazilian ports compare with that of the conference lines? A. I do not want to make any invidious comparison, but we think our facilities are just as good as theirs.

Q. Do you employ the same class of stevedores? A. Yes, at both places.

Q. Pay the same rate of wages? A. As far as I know. In Rio it must be so because the stevedores are all in a union, and also at Santos, and they must necessarily all 4507
receive the same wages. In New York it is the same.

Q. How many shippers are there in New York and Brazil that ship coffee over your line? A. At the present time there is only one shipper who holds himself out as being at all disposed to ship by us, and that is Arbuckle.

Q. Under what conditions and in what quantities do you handle their trade? A. We take any quantity he has got to ship.

Q. You do not require him to commit himself to send all his merchandise over your line? A. No, sir, uncondi- 4508
tional.

Q. I think you mentioned, but I will have to ask you again, what commodities other than coffee are shipped from Brazil to New York? A. The one second in importance next to coffee is rubber from the north ports almost exclusively, as from Pará and Manaos mostly; some rubber is also shipped from Bahia, and one or two of the other intermediate ports, but in insignificant quantities. The next most important is cocoa from Bahia as far as the United States is concerned, and the next, using a general term, hides and skins. Anything else is more or less

4509 insignificant. Well, you might put Brazil nuts fifth, from Pará. The Booth Line carries a good many of those. Medicinal products, cotton seed; that is practically all. Those last two are insignificant in amount.

Q. Can you name the shippers who ship these other commodities? A. I could not without looking up our record. I am not familiar with the names of the shippers in Bahia and the other north ports by whom the commodities are shipped.

Q. Do you know any of the important ones? A. I do not,
4510 no. Not from memory. I just recollect one at this moment, Rossbach-Brazil Company, a New York leather firm, imports and a great many hides and skins from Brazil. They export from Bahia, Maceio, Pernambuco and Ceará.

Q. Upon what do you base the coffee rate from Brazil to New York by your line? A. During the year and a half that I have been here I put the rates just as low as I possibly could in order to make a special endeavor to get some of the business, just as low as it could possibly be
4511 and leave us any chance to carry it at a profit, or without loss. As a matter of fact, we could afford to carry it for even somewhat less in order to give the ship some return cargo because in many cases the steamer takes two or three days longer in coming back with ballast than she would with cargo. We would be able to carry ten or 15,000 bags at even less than 26 cents, which was our minimum rate, without it being unprofitable in as much as the steamer has to return in any case.

Q. At what other ports does your line run to besides that
4512 between here and Brazil? A. What other foreign service?

Q. Yes? A. None, with the exception of Montevideo and two or three ports on the Paraguay River above Ceará.

Q. What are your ports of call?

MR. KIRLIN: Is that the New York service?

THE WITNESS: No, the Brazilian. I have reference to the foreign service.

Q. I have not referred to the foreign service; I said what their service for that trade outside of that between New York and Brazil? A. I have already testified we have the

coastwise service to all ports of Brazil; there are hun- 4513
dreds of them, and in addition to that the coastwise service and the New York service, there is no other with the exception of the service which calls at Montevideo and one or two other ports further up the river from the River Plate. Incidentally it calls on the west border of Brazil on the Paraguay River.

Q. In your regular service from New York to Brazil what ports of call do you make in Brazil and also in returning from Brazil to New York at what ports do you call in Brazil? A. I am making up some statements that 4514
you asked me for two or three days ago. I have those of the first two years, 1907 and 1908 made up, which I will hand you, showing calls during those years at Pernambuco, Bahia, Rio, and Santos at one sailing.

Q. You have them right there, have you? A. Yes. They are all here, (producing papers) and I will give you the others later.

Q. These are made up from your regular books? A. Those are made up from the records and checked up by myself and typed from the record. 4515

Q. And these are accurate? A. Yes; they are made up accurately from the records on file. That is all I know.

Q. That is what I meant? A. They are made up by employees who were in the employ of the company at that time.

MR. BALDWIN: I offer these in evidence.

Marked Petitioner's Exhibit 235.

MR. BURLINGHAM: These are made up from manifests?

THE WITNESS: Yes, the records there are made up 4516
from the manifest book—from the outward freight book.

Q. Mr. Slechta, is the Lloyd Brazileiro a line owned and controlled by the Brazilian Government? A. It is, and has been since August, 1911.

Q. Prior to that time it was not owned or controlled by the Government? A. It was not owned or controlled by the Government, but a very large share of the stock, of the securities and stocks, were held by the Brazilian Government and also received a subsidy from the Brazilian Government.

4517 Q. And the subsidy end of it was cut off in 1911? A. Yes, sir.

Q. And the Government finally took over the whole line? A. Yes, took it over entirely.

Q. Mr. Slechta, is your line ready and willing to start a service or take freight for any port in Brazil in order to foster and increase the commerce between the two countries if there is sufficient cargo offered? A. Yes, so far as is compatible with the character of our steamers and with the character of any that we may be able to
4518 charter.

Q. Are you likewise willing to serve any port of the United States on the Atlantic seaboard if there is any necessity for it in the way of sufficient commodities destined to any of them? A. Personally I have every inclination of that sort. As far as the policy of the company is concerned I am sure——

Q. Are you ready and willing at the present time so far as you can control it? A. Yes.

Q. And have been? A. Yes.

4519 Q. Mr. Slechta, are you familiar with the points of origin of the commodities that go to Brazil? A. I am more by virtue of my knowledge of where those things regularly come from them by virtue of any information I get from handling them here.

Q. Do any part of the shipments from New York to Brazilian ports come from the south and southwest? A. Yes, they do. Resin, lumber, turpentine, occasional shipments of agricultural machinery; that is practically all.

Q. Does that move in considerable quantities, those com-
4520 modities? A. Resin and lumber.

Q. You carry considerable of that yourself? A. Yes.

Q. Do you know whether or not that the conference lines carry a considerable part of it? A. They do; particularly the Prince Line and Hamburg-American Line.

Q. Mr. Slechta, you have supplied the list of the sailings of your line to Brazil for the years 1907 down to and including 1912, the number of boats on, the sailings and the number of chartered boats; the vacant space, tons and the amount received in gross—— A. Yes.

Q. I notice, however, that you have left vacant under the head of capacity any information? A. I could not give

you that complete because no record was made—I can, 4521
however, give it to you for 1912, but previous to that time we had no record apparently in the office of the dead-weight capacity of the vessels chartered. That is easy enough to estimate, but it is a little difficult to give accurately.

MR. BALDWIN: I offer that in evidence.
Marked Petitioner's Exhibit 236.
MR. KIRLIN: This is only outward?
THE WITNESS: This is outward only. 4522

Q. Mr. Slechta, is the homeward rate, or northbound rate, on coffee in any way influenced by the tramp competition? A. It is not my impression that it is.
Q. That is fixed largely by this rebate system, isn't it, that is established very largely?

MR. KIRLIN: We object to that as leading.

A. That is the only thing that I know now that enters into the fixing of the rates. 4523
Q. On coffee? A. Yes. I should qualify that by saying so far as our arrangements for Arbuckle are concerned, undoubtedly we would have to govern our rates or determine them largely by what Mr. Arbuckle could get a chartered vessel for. As a matter of fact, we can afford to carry it cheaper than a chartered vessel can, simply because we have to return the steamer to New York in any case.
Q. Mr. Slechta, is there any commodity moving downward to Brazil that in any way compares with coffee coming upward in the cost of carrying it? A. I should say 4524
that kerosene oil would be a commodity that might be very practically compared; also cement.
Q. Are you able to translate the rate of kerosene into the equivalent rate of coffee? A. Yes, I can do so. The rate on kerosene all during the last few months had ruled at about 30c. a case, which would be equivalent to, on a measurement basis, of the equivalent of $6 a ton, while coffee at 52½c. a bag, or, say roughly 50c. a bag less the primage would be, counting 17 bags to the ton, it is a little more than that, $8.50.

4525 Q. Making a difference in——

MR. KIRLIN: You are speaking of measurement tons in both cases?

THE WITNESS: No, I am not. The coffee would stow in somewhat less space than the kerosene oil. I would not make that answer because I don't know as a matter of fact. It depends on the circumstances; there is not very much difference. When I say 17 bags to the ton I mean a gross ton weight.

4526 Q. Making a difference—— A. In favor of coffee of $3.50 a ton.

MR. KIRLIN: I make it $2.50 a ton according to the figures.

THE WITNESS: Yes, I beg pardon; that is right.

Q. Those fluctuations of the charter market, do they in any way affect the rates charged in the time contracts? A. It makes a great deal of difference to us inasmuch as fully half of our service is chartered vessels. Of course,
4527 when we can obtain chartered vessels at a lower rate we can afford to give shippers a special inducement to compete with European shippers, giving them advantageous rates for placing their markets in Brazil. Of course, it works the other way.

Q. That does not apply to ships that you own, does it? A. No. As a matter of fact our rate is determined pretty largely by what we have to pay for chartered vessels, so far as it is determined by those considerations at all.

Q. In what sense is it affected by those rates at all? A.
4528 Well, take the case of cement; a large contract we have for example; just at the present time the charter rates are falling and we are able to charter boats for less money than we paid during a year and a half; certainly less than a year or more, and for that reason I have been willing to make concessions in the rate on cement in order that the American producer can compete with the producer in Hamburg.

Q. That only applies in the case of full cargoes, or very large shipments, doesn't it? A. Not necessarily. Naturally we would not give the same rate to a man who was shipping occasionally 200 barrels of cement as a trial

order as we would to a man from whom we know we can 4529
get 10,000 barrels a month and is obliged to give us that.

Q. What is the difference that you speak of in favor of the European shipper by which you say you are able to equalize in some way—— A. Well, we frequently, of course, are made aware of the fact by the shipper that in making bids for the Brazilian business that he is bidding against the producer in Europe. For instance, that is the case in cement, locomotives, car material. Those three are particularly notable examples, and it transpires that a man does not know just exactly what all the elements 4530
entering into the situation are, but he knows the European producer is underbidding him and he has to put his price down—the producer has to put his price down to as low a point as he can to make any profit and he will have to get the best freight rate he can in order to counterbalance the differential.

Q. Now, regardless of whether the charter rates prevailing are low or high, how do your rates compare with the rates of the conference lines? A. As a matter of fact we have to keep them slightly lower if we get our share of 4531
the business.

Q. I understood you to say that in bulk cargo, or heavy grade of merchandise, you are slightly below, but what they call the high class package you shade considerably to get the business? A. Yes.

Q. So that then actually in practice your rate, whether in any particular instance, are based upon the charter rates largely, are less than the conference rates? A. Naturally; in order to compete at all we have to keep them as low or lower.

Q. You have yearly contracts, don't you? A. We have 4532
some contracts covering shipments over a year.

Q. They are not based upon the fluctuation in the charter market, are they? A. No, sir. You have there some copies of contracts covering shipments for the whole year.

Q. You mean in this exhibit for identification? A. Yes.

Q. We will go over it a little later. When will you have those other statements? A. Of course, I can have them for you this afternoon. They are probably all ready by this time.

4533 CROSS-EXAMINATION by Mr. Burlingham:

Q. When was the Lloyd Brazileiro organized? A. You mean the Lloyd Brazileiro, the Brazilian corporation in Brazil?

Q. The steamship company that you are manager of? A. I am manager only of the New York branch.

Q. The steamship company, the New York branch of which you are manager? A. It was organized about June, 1880, or 1885; it was not organized as such; the name has been changed since that.

4534 Q. What was its original name? A. I couldn't say.

Q. In the eighties was it engaged in transportation between the United States and Brazil? A. It was not.

Q. When did it enter on that trade? A. In 1906; the latter part of 1906.

Q. Under what name? A. The Lloyd Brazileiro, of which the John C. Seager Company were the agents; afterwards it was the John C. Seager Trading Company.

Q. Had it already established a coastwise line in Brazil? A. From the time that the company was first started, yes.

4535 Q. In the eighties? A. Yes.

Q. It was originally a coastwise line? A. Yes.

Q. And then it entered upon the foreign trade? A. Incidental to its coastwise.

Q. In 1906, is it? A. Yes.

Q. And you had no connection with it until 1912? A. Not until 1911.

Q. In what month? A. I took charge of the agency in New York in December, 1911.

Q. Was it reorganized in Brazil while you were there in the consular service? A. It was reorganized actually at a
4536 time while I was on my vacation in the United States.

Q. In what year? A. 1911.

Q. Is that the time the Government took complete control of it? A. Yes, sir.

Q. Bought all the stock that they did not own before? A. Yes.

Q. And managed it? A. I could not say as to these details or circumstances under which they took it over.

Q. Was it like a reorganization here after a foreclosure? A. The Government bought in the securities and stock, secured the majority control of the company and simply

took over the management by virtue of that fact. How 4537
they obtained that I don't know.

Q. Now, the Brazilian Government completely and entirely owns the Lloyd Brazileiro? A. Yes.

Q. And completely and entirely manages it, is that right? A. That is my understanding, yes.

Q. Now, you spoke of a subsidy; what was that subsidy, from the Brazilian Government? A. The Brazilian Government granted the steamship company as a whole a subsidy, the total amount of which I do not know; and they also granted them a subsidy for the New York serv- 4538
ice, the amount of which I do not at this time recall.

Q. You can tell us approximately what it was, can't you? A. My recollection is that it was about $200,000 a year.

Q. In American money? A. In American money.

MR. SPOONER: Have you a copy of that subsidy agreement in your files?

THE WITNESS: No.

MR. MONTGOMERY: What do you mean, the whole?

THE WITNESS: No; the subsidy for the New York service; I may be quite wrong about that, but that 4539
is my recollection.

Q. Cannot you produce it? A. By writing to Brazil.

Q. Not otherwise? A. No.

Q. That is a matter of public knowledge, I suppose? A. It may be in Brazil, not here.

Q. What was the subsidy for the company as a whole? A. I don't know.

Q. Approximately, can you state? A. I could not even state approximately.

Q. Before the Brazilian Government got control and be- 4540
came the sole owner of the Lloyd Brazileiro had the company not been reorganized while you were down there in Brazil?

MR. BALDWIN: If you know of your own knowledge.

A. Not to my own knowledge.

Q. Don't you remember bankers stepping in and making a loan?

MR. BALDWIN: I object to that as incompetent and beyond that he says he does not know it.

4541 A. The firm that operated the Lloyd Brazileiro under charter from the Government was the firm known as M. Buarque & Company, and I believe they had at various times financial difficulties which made it necessary for the Brazilian Government to step in and assert control. I really am not familiar with the details.

Q. Did not the Rothschilds make a loan to the company, or to the Government for the company? A. I know that the Rothschilds did at various times make loans to the Brazil Government for the Lloyd Brazileiro.

4542 Q. And what was pledged to them as security for that? A. That I don't know.

Q. Don't you know that among other things were pledged to—the other properties that were pledged to the Rothschilds—were the subsidies which were given by the Brazilian Government to the Lloyd Brazileiro? A. I do not, no, sir.

Q. Don't you know that those subsidies are still under pledge to the Brazilian Government and are continued to this day by the Brazilian Government?

4543 MR. BALDWIN: Objected to as immaterial, irrelevant and incompetent.

Q. I mean to the Rothschilds? A. I have no knowledge of that. As a matter of fact they are not paying them a subsidy.

Q. How do you know that? A. Because when the Brazilian Government took—that is my understanding of it—when the Government——

MR. BALDWIN: I object to stating what his under-
4544 standing of it is.

A. When the Government took over the control of the company it is to be presumed that the subsidies were no longer paid out of the treasury of the Brazilian Government to be put into the other pocket of the Government.

Q. Unless they were pledged to the bankers? A. They were not pledged to the bankers.

Q. You don't know anything about that, do you? A. I know just as much about it as any of those other things you asked about.

Q. It is not a question of what I asked you, it is a ques-

tion of what you answer. I do not want your answers 4545
when they are not matters of your own knowledge. A. I really never held a position in the treasury of the Brazilian Government and am not familiar with those details.

Q. If I understand you correctly, your inference—it is an inference on your part from the fact that the Brazilian Government has taken control of the Lloyd Brazileiro that subsidies have ceased, is that right? A. That is my inference and understanding.

Q. Now, your company is an active competitor with these conference lines for business from the United States, isn't 4546
it? A. We so regard ourselves.

Q. And it has been certainly during the period that you have been the New York manager? A. Not any more so than heretofore as far as I know.

Q. And am right in saying in the fashion of competitors you get the highest rate you can that is compatible with getting business; is that your purpose as well as that of other transporting companies?

Mr. Baldwin: I object to that as to the custom of the others, and I object because it is a double 4547
question on the fact of it. I suppose he can state what he does.

Q. As a competitor for this business you get the highest rates that you can in order to get the business, don't you? A. We do.

Q. And that rate you say you make slightly less than the rates of the conference lines? A. At times it is slightly less advanced and at times it is even equal to it, and at times it is considerably less.

Q. What do you mean by slightly less advanced? A. For 4548
instance, a concrete instance——

Q. I want your idea as to what slightly means? A. That is what I want to tell you. In the case of the shipments under the contract of approximately 10,000 tons of car material, we understood that the shipper had a rate of 15½c. per cubic foot, and we took it at 14½.

Q. That would be a difference of a cent a cubic foot? A. Yes.

Mr. Kirlin: What kind of a contract was that?

The Witness: It was a contract covering 600 freight cars.

4549 Q. Did you carry that at a profit? A. I am unable to say.

Q. How many steamers do you own that are engaged in the trade? A. There are only three of our own steamers engaged in the New York trade at this time.

Q. How many sailings did you have in 1912? A. We had 31 despatched and cleared from the port of New York.

Q. And of those 15 were owned and 16 were chartered, is that right? A. Yes.

Q. You consider your boats pretty good boats, I suppose, your own boats? A. They have given satisfaction in
4550 the service. Of course, of their character they are not *Mauretanias*.

Q. Those three boats I would like the names of? A. *Tapajoz, Purus* and the *Tocantins*.

Q. What is the gross and net tonnage of the *Tapajoz?* A. The net tonnage of all of those steamers is about 2,400; the net registered tonnage.

MR. KIRLIN: Deadweight?

THE WITNESS: Yes.

4551 Q. When was the *Tapajoz* built? A. I could not state from memory; I can tell you by looking at Lloyds. (After examination of Lloyds.) The *Tapajoz* was built in 1902.

Q. And bought from whom, please?

MR. KIRLIN: What was her English name?

THE WITNESS: *Ras Issa*.

A. I think it was Grahams & Company.

Q. Now, the next one? A. The *Purus* was built in 1900.

Q. And bought from? A. The same concern.

4552 Q. What was her name? A. Her name was *Ras Dass*.

Q. Now, the *Tocantins?* A. In 1901 her name was the *Ras Bera*.

Q. What is the deadweight capacity of each one of these boats? A. About 6,300 tons—or 6,250.

Q. What is the speed? A. They are 10 knot boats.

Q. I suppose while they are pretty good boats they are not considered first class boats? A. They are not *Mauretanias* as I said before; they are cargo boats.

Q. And I suppose to get high class freight away from the faster boats you have to make a considerable concession in the freight rate, don't you? A. Generally speaking, yes.

Q. Now, as a matter of fact, most of the high class goods 4553
for Brazil go from Europe rather than from the United States, don't they? A. If you take Europe as a whole, that is true, yes.

Q. We make the shipments from here of the coarser goods? A. You are getting an increase in the large share of manufactured products sold in Brazil and getting an increase in the large shares in the trade of those products; but of the finer class of goods and particularly in food supplies, manufactured food supplies and that sort of thing Europe has the advantage. 4554

Q. With your knowledge of the situation in Brazil, having been in Rio so long, you are able to state, I suppose, whether the European service is better developed and a better service than the American service? A. Incomparably so.

Q. And it has a very large passenger service, has it not, three cabin? A. Very large, first, second and third class passenger.

A. A great many emigrants to Brazil? A. Not so many to Brazil, but more to the Argentine. 4555

Q. And those boats that go to the Brazils also go down to the Argentine? A. Most of them; practically all of them.

Q. You do it, don't you, with some of your boats? A. From New York? No, never.

Q. You have never had a service to Europe? A. The Lloyd Brazileiro ran two or three sailings to and from Portugal to Brazil.

Q. I notice in this Exhibit 236 that your cargoes carried in tons were about the same until 1911, very little increase or decrease, isn't that so, and then they made a 4556
great jump? A. Yes.

Q. Is that right? A. Yes.

Q. Now, what was the percentage of increase—I would rather that you do it than do it myself—between 1910 and 1911? A. The increased amount?

Q. The percentage of tons carried? A. About 40%, isn't it? A. I can tell you exactly if you give me a pencil. (After figuring) 1910 to 1911?

Q. Yes? A. About 65%. That is to say, 1910 is about——

Q. Put it the other way, 1911 is how much percentage

4557 above 1910? A. That is 46,000 feet increase over and above 117—it would be about 40%.

MR. BALDWIN: The number of tons each year is there; what difference does it make what percentage it is?

MR. BURLINGHAM: I will show you if you will bear with me.

Q. But the gross freight for 1911 appears to be almost 103% higher than in 1910? A. It is practically double,
4558 yes.

Q. How do you account for that? A. Well, the rates were undoubtedly high and the space was occupied by a better class of cargo, which naturally paid a higher rate of freight.

Q. There is nothing in this exhibit to tell us that? A. I am telling you that.

Q. I am not questioning you, but I say there is nothing in this exhibit to tell us that? A. No, nothing in that at all.

4559 Q. And I suppose it would be a work of great difficulty, involving a great deal of calculation, to show what was the cause of that large increase?

MR. BALDWIN: He has already answered.

A. I started to answer that by saying it would mean an analysis of every manifest.

Q. Do you think your own freight rates from New York to Brazil in 1911 were reasonable? A. I should judge so.

Q. And you, of course, are aware of the enormous in-
4560 crease in charter rates in that period, 1910, 1911 and 1912? A. Yes.

Q. And do you think that the rates charged by the Lloyd Brazileiro for transportation of merchandise from here to Brazil was proportioned to the increases in the charter rate?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent, and I want the same objection to the other question; not pertinent to any question I asked him on direct.

A. Not having been here during 1911 I shall have to look

over the records of the amount paid for chartered boats during that period in order to answer that with any satisfaction. The fact of the matter is, of course, that the Lloyd Brazileiro would be very glad to take advantage of the increases in rate in view of the increase in chartered rates on steamers. 4561

MR. KIRLIN: You could look at that and be prepared at the next hearing.

THE WITNESS: Yes, as far as the old charter parties are on file; I presume they are.

MR. KIRLIN: Please do. 4562

Q. I call your attention to your evidence before the Alexander Committee last winter, page 52. You testified as follows: "I may say that when I came here we were paying for our chartered vessels about 4 shillings 6 pence per ton per month. That is the arrangement for chartered vessels on what is known as the time charter, and at the present time what we are paying is practically double that, or very nearly so. I dispatched a steamer day before yesterday for which we are paying 7 shillings 6 pence." 4563 The Chairman said: "That is on account of the increased demand for tonnage?" and Mr. Slechta answered: "Exactly, and the freight rates have not increased anything like in that proportion, so that you see where we stand." That testimony is correct, isn't it? A. That is a general statement of fact.

MR. BALDWIN: Subject to my objection.

Q. And you were not referring only to the Lloyd Brazileiro, but to the rates generally, were you not? A. Yes, sir. 4564

Q. I notice also in your testimony before that committee that you stated that your company had lost $2,000,000 in six years, that is a fact, is it?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent and not pertinent to any question asked on direct.

A. That was simply an assumption, or, rather, a rough estimate of mine of what they must have lost. I knew nothing about the accounting of the company on the other end of the line.

4565 Q. Let me call your attention to this on page 40 of the Alexander Committee minutes, where I find the following: "Mr. Slechta, I would like to ask as regards the rates you charge for exports from New York to Brazil? How do your rates compare with the rates charged by the conference lines? My understanding is the conference lines all charge the same rates? MR. SLECHTA: They do, I believe, so far as I know. That is my understanding of it. I have no way of knowing further than just the general understanding that is common to everybody. Our rates are all
4566 that we can get, to be frank. We have to do it. As a matter of fact, I came up here to give it a last chance. This company has been operating on the New York service for six years now on a losing basis absolutely. Now, I presume—I am just guessing at it, because I have no means of knowing except from general conclusions—but I suppose they have lost fully $2,000,000 in the six years that they have operated. DR. HUEBNER: How do their rates compare? MR. SLECHTA: We follow the other rates, just a little below. We cut under their rates sufficiently to get
4567 the cargo away from them. That is just the idea, and we fill as many ships as we can." Is that testimony correct? A. Yes.

MR. BALDWIN: I object to that for the same reasons, and I would also say it is not a proper question to ask him.

Q. In this coastwise——

MR. KIRLIN: The facts stated in those questions and answers are true, aren't they?

5068 THE WITNESS: That is my impression, that they are facts and naturally that is why I stated it at the time, and I haven't had any reason to change my mind.

Q. The coastwise service of the Lloyd Brazileiro is a complete one and covers a very large number of ports? A. It covers every port in Brazil. We have about 65 vessels in the service on the coast of Brazil.

Q. How do the rates for those intermediate ports compare with the rates from the United States to Brazil?

MR. BALDWIN: Objected to as immaterial, irrele-

vant and incompetent, no basis here, and it is not 4569
a criterion by which to judge the rates from New York there.

MR. KIELIN: Has it no bearing on the question of reasonableness?

MR. BALDWIN: If it goes on your theory that is one thing; if it goes on our theory it is another.

Q. Go ahead? A. The rates are very high compared with New York; the cost of handling cargo both in the discharge and loading is higher than in the New York service. I 4570
could not answer you specifically with reference to the rate from any port to any other port, but that is the general impression I have.

Q. You do know—take a particular service from one large port in Brazil at which the steamers from Europe and the United States call, and also another port with sufficient facilities—you know those ports and I don't; name me a couple of such ports?

MR. BALDWIN: I object to it as immaterial, irrelevant and incompetent. 4571

A. I could give you this illustration; it just occurs to me now. We have not been carrying cargo for very long for transshipment at Brazilian ports. That is the nearest I find here, but I have authority from my principals to send cargo to Rio Grande do Sul and Porto Alegre, in the south, away south, for transshipment at Rio de Janeiro and——

Q. That is a distance of 720 miles? A. Yes.

Q. What is the rate?

MR. BALDWIN: All subject to my objection, Mr. 4572
Burlingham?

MR. BURLINGHAM: Yes.

Q. The rate that I must add to my New York freight is for Porto Alegre which means two transshipments, the transshipment at Rio and also at Rio Grande, and considerable delay in coming across the bar because of the difficulties of navigation there, an additional rate of $5 covering that.

Q. $6 for what? A. Per ton.

Q. What is the rate from New York to Rio? A. It varies at different times.

4573 Q. That is to say per ton? A. That is the ton rate on all—take, for instance, steel rails; the rate varies from $6 to $7.50; I don't know just what it is now; the rate from Rio on rails to-day would be $6 in addition.

Q. You mean to carry a ton of rails from New York to Rio, a distance of 4,748 miles is only $6 or $7 and from Rio Porto Alegre, a distance of about 700 odd miles, is $6 more? A. Yes, and it is more profitable to handle the business on those figures from Rio to New York than it is from Rio to Porto Alegre.

4574 Q. Suppose we drop out of consideration Porto Alegre and consider a shipment from Rio to Rio Grande do Sul; that is the rate, no bar and no second transshipment, no difficulty? A. $4 a ton is my recollection. I am not certain as I told you. Porto Alegre is the only rate that I remember.

Q. Those rates you have given now are the rates which you as the New York agent are authorized to quote to New York merchants and shippers for transshipment from Rio to these various ports? A. Yes, sir.

4575 Q. Now, I want to know what the local coastwise rate between those ports is? A. I don't know.

Q. Will you find out for me? A. I can by writing to Brazil.

Q. Haven't you a tariff? A. No, sir.

Q. Isn't it a matter of tariff? A. They have no printed tariff.

Q. You have lived in Rio five years? A. Yes.

Q. You never took any interest in it while there? A. I took an interest in the business but it did not concern American business particularly. For instance, goods sent from

4576 New York to southern ports either go on a direct through shipment or on a through bill of lading for transshipment at Rio.

Q. Can you give me the coastwise rate from Rio to Pernambuco? A. No, sir.

Q. Can you get that for me? A. By writing to Brazil.

Q. I ask that you at your earliest convenience obtain the rates charged by the Lloyd Brazileiro for the coastwise trade to all coastwise ports in Brazil?

MR. BALDWIN: I object. I don't know that we should keep this case open on the Government's side and not close at all to wait for anything from Brazil.

THE WITNESS: I was going to say that that would 4577
be subject to the disposition of the Lloyd Brazileiro. I don't know that they would care to give their rates. I have no reason to suppose they would not.

Q. Couldn't you go perhaps so far as to cable for them? A. That would be impossible; the rates on different commodities.

Q. I should think you could easily send a cablegram to Brazil asking them to furnish you the coastwise rates for the service? 4578

MR. BALDWIN: I don't think that is a matter for the record here, Mr. Burlingham.

MR. BURLINGHAM: I would like to have it on the record, and if the Government wants to hasten the proceedings I think this is a very excellent way to hasten them.

MR. BALDWIN: It is immaterial what they charge in other places, and it would delay the case and the Government will not assist you or make a move; it is entirely outside of the issues. 4579

MR. BURLINGHAM: Do you admit the rates are all reasonable?

MR. BALDWIN: No, you can just take it flat, we won't do it.

MR. BURLINGHAM: Do you want to put that on the record that you decline to do it?

MR. BALDWIN: I absolutely decline to hold the case open until something comes from Brazil.

MR. BURLINGHAM: I ask you to let us have this information as we have given you information and let the Court pass on its materiality, 4580
and if you instruct the witness, or intimate, tell him that it is not necessary to do it, of course, he is not likely to do it, and he is a fair, honorable witness and man, and he said he would try to get it.

MR. BALDWIN: I asked no question of this witness upon the reasonableness of rates; therefore, a question asked upon that question is outside of and not pertinent to the direct; therefore he must be considered to be the witness of the defense, and the Government do not pretend to control him as a witness for the defense, or even a witness for them, but

4581 we propose to close this case before hot weather and we are not going to wait here on matters which are not pertinent to the case and which we did not bring out, and which is only sought by the defendants and should be put in as part of their own case.

Q. Now, Mr. Slechta, if you will send such telegram as I request we will pay for it? A. I haven't the slightest objection to sending it as far as I am concerned, if it is permissible. It is very doubtful whether I will get it or
4582 not.

MR. BALDWIN: Do you mean to say that you also want that on the record, Mr. Burlingham, what you just stated to me now?

MR. BURLINGHAM: Yes.

MR. BALDWIN: I ask to have it stricken out as not pertinent and has no relation to this case. It is a matter of colloquy between counsel and witness.

Q. What I want, Mr. Slechta, is the coastwise rates be-
4583 tween ports in Brazil charged by the Lloyd Brazileiro for certain principal commodities, not for every little bit of an article? A. I want to assure you that my disposition is the best. I have nothing to win or lose in this business personally; it is merely the matter of the disposition of the Lloyd Brazileiro.

Q. You cannot do any more than that, but if you will be kind enough to do that, I will appreciate it very much; cable to them to determine whether they will accede to your request.

4584 MR. BALDWIN: Even if produced it will not be competent from any standpoint, and I think I ought to see whether it is pertinent to the question or not.

THE WITNESS: That is what I started to say; I don't see how it is going to help the defendants at all, if that is what they are. The matter of rate on cement and steel sent from Rio de Janeiro to Pernambuco is not pertinent to anything because they are never shipped that way, and the same thing is true of cement. It might be pertinent to ask about the rate from Rio de Janeiro to Aracaju, but because it is impossible to ship those products from Europe or the United States on the existing steamship lines.

The same thing is true to a limited extent of ports in 4585
South Brazil. The navigation of that inland salt lake there, or whatever you want to call it—they call it laguna—it is so difficult, and the port about Rio Grande do Sul is so difficult to navigate, that the Hamburg-American Lines are the only ones that care to send ships there at all, and, as a matter of fact, our company does not care to ship heavy merchandise of any kind, for transshipment or otherwise, from Rio de Janeiro to those ports, because it costs more than anything they get out of it, no matter 4586
what the rates are as a matter of fact. They accommodate us up here in order to assist us in getting business.

Q. Isn't there flour milled in Rio? A. Yes.

Q. Isn't beer brewed and bottled down there? A. Yes.

Q. Isn't it distributed through Brazil, and isn't it carried by your boats? A. Beer is carried as far north—well, practically, in all ports from Rio. Flour is not; flour is carried to some extent from Rio to the ports in the immediate vicinity. Flour is shipped to most of the ports in 4587
Brazil, is exported directly from Uruguay and the Argentine. That is, that is all milled at Rio and Santos and some part of it is consumed, very largely, right in the vicinity.

Q. I suppose that you do carry some flour from Rio to the ports north? A. Not flour north. Never farther than Bahia and Aracaju.

Q. Well, I told you what I want and you said you would try and get it. What are your rates on general merchandise from New York to Pernambuco, measurement cargo?

MR. BALDWIN: I take an objection to this.

4588

A. They vary from 20 to 30c per cubic foot.

Q. What are they to Bahia? A. About 4c more.

Q. 24 and 34? A. Yes.

Q. What are they to Rio?

MR. BALDWIN: All subject to my objection.

A. The same as to Pernambuco. I would say in the case of Rio from 20 to 33.

Q. That is different from the Pernambuco rate? A. Simply because of the higher class of cargo.

4589 Q. What are they to Natal? A. They vary from 24 to about 35.

Q. Now? A. We have some rates at times; we have charged on certain classes of cargo as high as 40 cents.

Q. Never 50? A. Not in my recollection. I can tell you about it.

Q. Will you kindly look that up before the next hearing? A. Yes.

Q. I would like the rates to these ports not only for 1912 but also for 1911, 1910 and 1909; will you kindly get that
4590 for me for the next hearing? A. Yes.

Hearing adjourned to Monday, June 23rd, 1913, at 2 o'clock P. M.

New York, June 23, 1913.

By consent hearing adjourned to Tuesday, June 24th, 1913, at 10.30 A. M.

New York, June 24, 1913.

4591 By consent hearing adjourned to Wednesday, June 25, 1913, at 10. 30 A. M.

New York, June 25, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

STANLEY D. MONTGOMERY, Esq., ERNEST E. BALDWIN, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by
4592 Charles Burlingham, Esq., and Charles C. Burlingham, Esq., for Frederick T. Busk, et al.

MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin, Esq., M. W. Maclay, Jr., Esq., for Prince Line, et al.

MESSRS. SPOONER & COTTON, by J. C. Spooner, Esq., for Paul Gottheil, et al.

J. J. SLECHTA recalled.

CROSS-EXAMINATION by Mr. Burlingham:

Q. You said you would be good enough to look up the rates from New York to Rio, Pernambuco, and Bahia;

have you done so? A. The rates from New York, yes. I 4593
think at this point I want to make a little statement before you go on with the cross-examination. As a competitor of the gentlemen whom counsel represent I do not feel that I ought to give that information until I see that similar information is forthcoming from the other lines.

Q. Have you a tariff? A. No, sir.

Q, Have you ever seen their tariff? A. I have. A very old one, and not in force at this time.

Q. Why do you say that? A. So I understand. I know it is not in effect. 4594

Q. Are you familiar with the testimony that has been given here? A. Fairly so; I have heard a part of it.

Q. And haven't you heard a good deal of testimony as to the tariff and the revisions of the tariff? And rates in force in January, 1913, and for previous years?

MR. BALDWIN: That is, from here to Brazil?

MR. BURLINGHAM: That is what I am asking him about.

A. I do not believe I heard any of that testimony. 4595

Q. As I recall the testimony, it is very clear and positive to the effect that there is a tariff in effect? There maybe a tariff in effect. I say the one I am familiar with the rates certainly are not in effect.

Q. If you have no tariff how do jobbers ascertain your rates? A. They are subject to change from day to day.

Q. Now, I ask you to give the rates from New York to the four ports that I specified?

MR. BALDWIN: What are they?

4596

Q. Rio, Pernambuco, Bahia and Natal, on a few familiar commodities that were shipped in 1908, 1909, 1910 and 1911 and 1912 and in force now? A. I could not do that. That would be almost impossible. It would mean giving a manifest; that is just about what it would mean, the steamers' manifest.

Q. The very last question but one that was asked you last week was whether you would be kind enough—"Will you kindly look that up before the next hearing," and you said yes? A. I did not entirely understand the purport of it at the time, but in thinking over it lately I did make some specimens, or rather average rates, and took the average

4597 rates of freight from New York to several different ports on different sailings in 1912. I can give them also for part of 1911, and I believe for part of 1910, but back of that our records so far as rates are concerned are not available.

Q. You say they varied from day to day? A. Yes; that is to say, they are subject to change at any time.

Q. And are they different to different people? A. No, sir.

Q. And do they vary in accordance with the quantity shipped? A. We naturally give a man who is willing to
4598 make a shipment say of a given large quantity per month for a pretty large period, six months, a somewhat better rate than to a man who comes in and gets a rate on small quantities in a single shipment.

Q. Then it is a matter of bargaining between you and the shipper for each particular shipment, and for each particular shipper, is that it? A. You could put it that way if you wish. I would not put it just that way.

Q. How would you put it? A. I simply say we have no printed schedule of rates.

Q. It is not a question of whether it is printed; it may
4599 be typewritten? A. Let me finish my answer.

We have no printed schedule of rates, nor have we any fixed schedule that is not printed, and our rates, as the shippers all understand, are subject to change without notice except in the case of contracts.

MR. KIRLIN: That is true in all trades, isn't it?

THE WITNESS: I don't know whether it is or not. I know that is our case.

Q. Do you consider your rates fairly steady from New
4600 York to the Brazils?

MR. BALDWIN: I object to its materiality; how he considers it.

A. Our rates have been practically stable during 1912 and 1913, since I know anything about them personally.

Q. Don't you consider it highly advantageous to shippers as well as to ship owners to have stable rates? A. As stable as possible, yes.

Q. It makes it easier, I suppose, for the men who make their forward contracts and arrangements for shipments and sales to foreign countries? A. That is true with cer-

tain shippers. A great many times it is to the very great 4601
advantage of the shipper to be getting big reductions in his rates in order that he can compete with the competitor on the other side.

Q. You mean in Europe? A. Yes.

Q. You say you have the conference boats' tariffs and that you have had them for several years, or have you knowledge only of those published or distributed or available during this year that you have been connected with that line?

MR. BALDWIN: I don't recollect that he had con- 4602
ference rates or books.

A. I said that we have had copies of the printed tariff; I don't know which year it is, or which one.

Q. What copies of the tariff have you had? A. My recollection is that it is one of 1890 something; it is very old.

Q. Do you keep yourself apprised of the rates the conference lines are charging? A. It is my freight brokers' business to do that. I do to a certain extent myself. 4603

Q. As they are made, of course, you do keep yourself apprised generally of the rates? A. Yes.

Q. You testified the other day that you went below them only slightly in most instances, did you not? A. I think I said that. Naturally, what one person would regard as slightly some other person would not regard as slightly. On the whole we do cut the rates slightly; sometimes, in certain cases, it amounts to a considerable cut, but on the whole it would be fair to say that we cut them slightly.

Q. You see, it is rather difficult for us to know how much you cut them when you haven't a tariff and don't 4604
tell us what your rates are? A. It is very difficult for me to tell the same thing. Many times when we think we cut them we do not cut them at all. I can only judge by what the shippers tell us they pay.

MR. BALDWIN: You mean pay on the conference lines?

THE WITNESS: On the conference lines. That is my only way of knowing, because, as I say, the printed schedule is not in force as it exists.

Q. You try to follow freight rates and cut them a little,

4605 is that the idea? A. It would be more correct to say that we fill our ships at as good a rate as we can get and get the business regardless of what the other fellow gets.

Q. And do you regard your rates as reasonable?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent.

A. Yes.

MR. BALDWIN: What he considers is not at all pertinent here as to the reasonableness of rates.

4606

Q. Who is your freight broker? A. Charles L. Timson.

Q. How long has he been with the Lloyd Brazileiro? A. I think, except for a short period, he has been employed by the company since 1907. He has also been in the employ of the conference lines.

Q. At the same time? A. Before; I hope not since.

MR. KIRLIN: What conference line do you mean, not all the lines?

THE WITNESS: No, I think as a matter of fact he was at one time connected with the Prince Line.

4607

Q. Does your line as a Government owned line get any special favors in the way of remission of consular fees here in New York on shipments from here to Brazil? A. No, sir.

Q. Do you pay for legalizing the manifests and bills of lading, the usual rates? A. We do.

Q. Are those remitted at the other end, do you know? A. No, sir, they are not.

4608 Q. How is it in Brazil, fees on shipments from Brazil to New York?

MR. BALDWIN: Do you mean United States consular fees?

THE WITNESS: What fee do you mean?

Q. I mean all the Government fees of the Brazilian Government in Brazil? A. I know nothing about the Government business going out from Brazil at all. As a matter of fact we have not had much opportunity to find out about any fees because we have had no cargo to speak of, thanks to the conference lines.

MR. BURLINGHAM: I move to strike that out. 4609
THE WITNESS: I would like to have it go in the record.

Q. Have you made any effort since the last hearing to ascertain what the coastwise rates are from Rio to some of the Brazilian ports?

MR. BALDWIN: I object to that as immaterial, what the rates are.

Q. You can answer that question yes or no? A. I did. 4610
I did not cable because I found a memorandum of some old rates that were in force in 1910, since which time there has been a reduction of about 40 per cent. in the rates, so that you can get an idea of what they are.

Q. Then you will be able to answer my questions with regard to that? A. I think I should make the same objection to answering that as I made before. I do not know why I should be put on the grill. Our competitors seem inclined to take the view that this is largely in my behalf, or, rather, in behalf of the Lloyd Brazileiro, and I have 4611
not taken that attitude, but if they insist on doing it and insist on cross-examining I think I shall simply take the attitude that all of that information is more against me than it is in my behalf. If it is wanted by counsel for the defendants I have no objection whatever to getting it except as a matter of principle.

Q. Will you kindly give me the rate from Rio to Maceio?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent, and not pertinent to any of the issues in this case. 4612

Q. The commodities you have a memorandum of in 1910? A. I am afraid I omitted to bring those with me. You will have to revert to that this afternoon again. I thought I had them with me, but I left them on my desk. I had two or three memoranda about it.

Q. Do you recall? A. I could not say from memory, no.

Q. You spoke of bringing rubber; where did you bring rubber from? A. We don't bring any of it from anywhere now.

Q. Where did you bring it from? A. There used to be some shipments from Pará mostly.

4613 Q. Are there very large shipments from Pará to the United States? A. There are very large shipments; they are getting smaller now. In value there are very large quantities of it.

Q. That is in northern Brazil? A. At the mouth of the Amazon. The Booth Line Steamship Company carries all them now from Manaos and Pará.

Q. And you carry none of it you say? A. We have no service there at the present time.

Q. Why, have you abandoned your service from there?
4614 A. Because the boats we had available were withdrawn and placed on their coastwise service. I say we have no service, I ought to qualify that by saying occasionally our boats do stop there on the upward run to New York. We had a small shipment just a few days ago of rubber from Pará and that is the first in some time.

Q. When did you cease to call regularly at Pará? A. Just the time of my arrival at the end of 1911, or, rather, the beginning of 1912. They withdrew the passenger service consisting of four vessels—or maintained by four
4615 vessels—which up to that time had called at the northern ports on return.

Q. Do you recall what proportion of the rubber shipments from Pará to the United States you carried previously? A. I do not recall, and I have, of course, no reason to have any recollection about it because I was not here at the time that it came.

Q. Have you any records—— A. I have those records and I am just getting them up for Mr. Baldwin.

Q. I think you stated the other day that your rates were
4616 more or less affected by the charter market, because you chartered a very considerable number of vessels; did you say that? A. Well, if I said it I would have to qualify it.

Q. How would you qualify it? A. By saying that as a matter of fact while we try, naturally, to get higher rates, if the rates for chartering ships are high, as a matter of fact the rates which we get are not dependent in any way upon the rates that we pay for chartered vessels; they depend upon the rates which are made by our competitors.

Q. You mean no matter what you pay in the charter market for a boat you will cut the rate to compete successfully with your rivals? A. Exactly.

Q. Even though you run at a loss? A. If we have a chartered ship——

Q. Answer the question? A. I am trying to. If we have 4617
a chartered ship the only way we can avoid a heavy loss if we are to have a loss due to those low rates of freight and high rates of charter is by filling up as well as possible, or as nearly as possible.

Q. The coffee you carry for Arbuckle do you bring in chartered boats? A. We have brought some in charter and some in our own boats; mostly in our own ships.

Q. What do you carry in the chartered boats from Brazil to New York? A. Nothing when we have no coffee.

Q. Do you have them on time charter? A. Yes. 4618

Q. And do you find it better not to charter for a voyage? From here to Brazil, but to charter for a longer period? A. Yes, it is very seldom possible to charter for a voyage from here to Brazil only.

Q. Your rates on coffee from Brazil to the United States are not calculated to bring you in a profit, but just to prevent you from making a loss?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent and a leading question.

4619

A. Does that question stand?

Q. Yes? A. I don't know just exactly what you mean when you ask whether the rates are calculated to do something; they are not calculated to do anything. We try to make the rates an inducement for shippers to ship by our line, and they are calculated to be profitable, and not anything less, and naturally the rate is not as highly profitable as it would be if it were 50% higher.

Q. If I recall, you stated the other day that as you would come home in ballast if you did not have coffee, the main 4620
thing was to fix the rates so that you could pay the expense of coming in in ballast? A. I don't believe I said that.

Q. Did you mean that? A. I don't believe I said that.

MR. BALDWIN: I object to that question.

Q. Did you mean that? A. I did not mean it if I did not say it.

Q. Is that true? If I made a correct statement of the situation? A. What I think I said was that we could afford to carry the coffee at a low rate and at a rate which would not pay were it not for the fact that the ships had to return here in any case, and in saving expense, just

3621 so he makes the service as a whole; that is, the round voyage so much more profitable.

Q. Now, of course, if the charter market is high and you are bringing home coffee at these low rates in a charter boat, you are losing money, aren't you?

MR. BALDWIN: I object to that as immaterial; it is speculation——

A. No, sir, I don't think so.

4622 Q. Let us take an instance; what have you paid for a charter boat lately; give us a particular instance? A. Well, we have some chartered boats.

Q. Take one, please, and simplify the matter? A. The *Strathclyde*, for instance.

Q. How much did you charter her for? A. I cannot recollect exactly, but about $8,500, I believe, a month.

Q. You might tell me how much a ton? A. I couldn't say.

Q. It makes it $8,500? A. Approximately, yes.

Q. How long does it take her to make the voyage, the
4623 forward voyage? A. If the conditions of the weather are normal she would make the voyage from Santos to New York in twenty-one, twenty-two or twenty-three days, according to the weather conditions.

Q. That does not include loading and discharging? A. No, sir.

Q. If you include loading and discharging, how many days? A. It depends on how much coffee she has.

Q. Assuming you are bringing for Arbuckle a cargo of coffee? A. Assuming that she had 30,000 bags from San-
4624 tos it would take her probably five days to load them.

Q. And how many to discharge? A. However, in completing my answer, a part of that would be taken up, or rather, would be counterbalanced by the fact that some of the coffee would be loaded while she was discharging other cargo at Santos.

Q. Otherwise it would take longer, you mean? A. No, the full time for loading would be approximately five days, and possibly two days may be taken off by reason of the fact that it was being done while other cargo was being discharged.

Q. Now, for discharging how long? A. That amount of

coffee would take three days in New York at Arbuckle's 4625
wharf; if it were at our wharf it would take two days.

Q. Do you mean to say you can load 30,000 bags of coffee in ordinary normal circumstances in Santos in three days? A. In five days 30,000 bags.

Q. Will you tell us what the cost of operation to you is; you have to pay for coal, I suppose? A. We have to pay for it in any case, whether she brings coffee or not.

Q. How much is it for such a ship? A. She will burn 600 tons; that would be——

Q. That would cost in Brazil how much? A. We don't 4626
buy it in Brazil; we buy it in New York.

Q. Do you buy it in New York? A. Yes.

Q. Always? A. We never coal our ships in Brazil.

Q. How much? A. Approximately $2,000. Just please bear in mind that the coal is consumed whether we carry coffee or not.

Q. I am only trying to find out—or make plain to you —I am trying to find out what your gross receipts are coming out and what your expenses are? A. The point I make is that it is not fair to consider that as an expen- 4627
diture operation against the coffee earnings alone, because it is an expensive operation in connection with the outward business as well, because we have to return the ship to New York in any event

Q. When you say that you buy your coal in New York to coal the ship for the return voyage, that from this fact it takes the place of cargo going down and it goes, therefore, to the original cost that you pay Berwind-White, or whoever it is, you have to have the loss in freight space excluded or cut out?

4628

MR. BALDWIN: Do you understand the question?

THE WITNESS: Yes, I think I understand it. That would be true were it possible to get enough cargo, to engage cargo to take the space that the coal would ordinarily take.

Q. You are taking the *Strathclyde*, I think it is? A. Yes.

Q. But I suppose you regard her as a type of various vessels? A. Yes, she is a type.

Q. I don't ask you to answer it generally, but I wish you would bear in mind that my purpose is merely to find out what the cost of transferring is and what the expenses

4629 are, and I wish you would freely and frankly, as you will no doubt, tell me what the cost of earning anything on the return voyage is? A. So far as the *Strathclyde* is concerned, we did not have sufficient cargo to fill her, so that any coal we saw fit to take which did not put her much below her marks, below the deep load line, did not cost her anything to carry.

Q. And the *Strathclyde* is a peculiar case, is it? A. No, I don't think so. It is peculiar in that her capacity was not in fact taken up with cargo; in other cases we usually
4630 just about fill the ships and give them enough coal to take them both ways, and we seldom have any cargo shut out.

Q. How much cargo space does this coal you need to come back with take? A. It takes approximately—it depends on the ship; a ton of coal would occupy roughly 35 cubic feet, or 40.

Q. Where do you place this return coal on the voyage down; where do you put it; in the cargo space or in the bunkers? A. We naturally do not put it in the bunker space, because most of those vessels have bunker space
4631 sufficient to probably take them from here to the West Indies.

Q. Then you put it in the cargo space? A. We put it in the hold.

Q. What other expenses do you have besides coal, port charges? A. Port charges at both ends.

Q. How much are they? A. I could not tell you without referring to the records.

Q. Roughly? A. I couldn't even tell you roughly.

Q. Will you ascertain? A. Yes, but I really don't see
4632 what the object of all that is.

Q. I didn't ask you to be the judge of what is material or relevant; try to help us out, that is all? A. I know that, but it is so ridiculous and preposterous. I do not know a thing and I have no way of finding out about the cost of port charges in Brazil. I have nothing to do with it whatever.

Q. Do you know the port charges here? A. Yes.

Q. Will you state those? A. I can state them from the records, yes.

Q. Will you? A. I have no objection to doing so. It is the same for one company as another.

MR. BALDWIN: Incidentally they are all fixed by 4633
the law and regulations.

THE WITNESS: You can find them out from the Port Warden in the Custom House if you want to take the trouble.

Q. Is it a fact that if you did not have to bring the boat back here 26c would not be a paying rate to bring coffee from Brazil to New York in chartered ships?

MR. BALDWIN: I object as absolutely immaterial and incompetent. He is not qualified to state 4634
whether it is a paying rate or reasonable rate or not. It does not assume any state of facts upon which to base a computation or an opinion.

A. I have no objection in saying it would be an absolutely unreasonable rate; that is to say, it would be impossible to pay expenses.

Q. Unremunerative? A. Certainly. Were we running a service from Brazil to New York only we could not afford to carry coffee at 26c a bag. 4635

By Mr. Montgomery:

Q. You mean to go back to Brazil empty? A. Yes. I assume that is what the gentleman means. That is the only other condition under which we could operate.

By Mr. Baldwin:

Q. I notice the other day you spoke of one of the shippers as F. J. West, wasn't it? A. Yes.

Q. Was he your predecessor as agent for the Lloyd? A. 4636
Yes, he was.

CROSS-EXAMINATION by Mr. Kirlin:

Q. Now, Mr. Slechta, I would like to preface the questions I have to ask you by stating that they are not prompted by any desire to inquire into the details of your business that will help competitors, but that I consider it necessary by reason of the fact that the Government have made you a witness and have taken testimony from you which they are using against your competitors and, therefore, I hope you will feel inclined to answer the questions with that candor which is characteristic of you when you

4637 want to tell us what you know? A. I will do the best I can. Of course, remembering the rights that my company have in the premises. I want to be perfectly frank.

Q. I appreciate the delicacy of your position, but you must also appreciate ours? A. Yes, I will try to.

Q. Now, in answer to a question by Mr. Baldwin you said that according to your judgment about 90% of the cargo that was carried by your vessels, your line, to Brazil, was made up of what you described as bulk cargo? A. Yes.

Q. Isn't it a fact that of the whole mass of cargo that
3638 goes from here to Brazil not only by your line but by the other lines, the very great majority approximating 90% is that kind of cargo? A. I could not say with reference to the percentage, but I have no hesitation in saying that the great majority is certainly bulk cargo.

Q. In answering the enquiries along that line you did not mean to imply, did you, that your line carried relatively any larger proportion of what you call the bulk cargo than was carried by other lines to Brazil? A. That would be pretty largely a guess on my part; I really have no way of knowing.

4639 Q. But it is your general impression that all of you have to carry approximately the percentage that you carry because that is the character of the trade, isn't it? A. As a matter of fact most of the competition is on that class of cargo as far as we are concerned.

Q. Perhaps you had better explain what you included in the designation of bulk cargo, different classes of goods? A. After I gave that testimony the other day it was suggested to me that possibly my estimate was not correct, and so I made it a point to figure out exactly the propor-
4640 tion on one of our ships we happened to have loading at that time, which has since sailed. The cargo shipped on that steamer—what is designated as bulk cargo—was 87 per cent. of the total, and we had an unusually large proportion of general cargo, and in that tabulation that I made our calculation of bulk cargo included resin, flour, cement, steel rails and parts of steel rails, barb wire, car material, oil; I think that is practically all.

Q. The general way of counting as machinery, structural steel and cars and outfits for power plants and railroads and all that sort of thing? A. Some of that would be classed as bulk cargo. That is, of course, in small ship-

ments. A man shipping down say two or three hundred 4641
feet of machinery and that sort of thing, why, that is, of course, high class cargo.

Q. Adding things of that kind to the commodities that you had on this last ship we have an approximate classification of what you mean by bulk cargo? A. I would not include those things as bulk cargo. Structural steel, yes, and structural material partly manufactured and practically completely manufactured, but not set up, freight cars, for instance, shipped knocked down to be set up in Brazil; all of that goes as bulk cargo, but anything in the nature 4642
of machinery is not bulk cargo.

Q. I have in mind generators? A. That is all high class cargo. We carry very little of that.

Q. What is the nature of the cargo which you describe as package cargo; what is included in that? A. All kinds of provisions, hardware, iron and steel manufactures, similar to hardware supplies; that is to say, as distinguished from bulk iron and steel manufactures.

MR. BALDWIN: Do you say produce?

THE WITNESS: All kinds of provisions, yes. 4643
Canned goods, for instance, cases of corn, flour, and all kinds of case goods generally.

Q. Now, those are the commodities on which as I understand it you shade your rates more than you do on bulk cargo? A. Yes.

Q. Because they carry a larger rate to begin with and they are the cream of every cargo? A. Yes.

Q. And as to that class of cargo you consider that you get your fair share? A. I don't think we do. 4644

Q. You intimated that here the other day; you said you doubt very much whether the other competitors get more package trade than you did, with the exception of ports to which you do not send ships? A. That had reference especially to the Prince Line and the Hamburg-American Line.

Q. You are now exempting the Lamport & Holt Mail boats? A. Yes.

Q. But apart from those? A. Apart from those in a general way I think we get probably our share. I have no way of knowing.

4645 Q. Now, coming to the question of regularity of sailings in your experience what measure of regularity have you found merchants trading to Brazil to require for the satisfactory conduct of their side of the business? A. My experience has been just this, that they require a sailing for the first half and the second half of the month.

Q. Why is that? A. Simply because sales are usually made under those conditions; that is, that shipment be made from the Port of New York during the first half and during the second half of each month.

4646 Q. So that a service which provided sailings within the first half and again within the second half would provide regular sailings within the requirements of the merchants?

MR. BALDWIN: I object to that. He cannot state what the merchants requirements are.

A. Not altogether, Mr. Kirlin, for instance, it is possible to have a sailing during the first and second half and yet to hold a steamer so long in port that it causes inconvenience to shippers.

4647 Q. Assuming they were despatched with reasonable promptitude after being put on the berth, would that be so?

MR. BALDWIN: I object to that, because it might not be put upon the berth on scheduled time.

Q. My question assumes them put upon the berth in the first half and in the second half, and that they are despatched with reasonable promptitude when put on the berth?

4648 MR. BALDWIN: I object to all of this as immaterial. The witness is not competent to testify as to what the concensus of the requirements or desires of the merchants are.

A. If a steamer is placed on the berth, that is to say, the first of the month and she is advertised to sail, we will say, for the eighth of the month, and the steamship company receives the cargo sometime previous to her going on her berth on the first of the month, and she does not sail actually, we will say, until the 14th or 15th, that usually causes some little complaint, although she gets out bills of

lading dated all during that half of the month. That prob- 4649
ably would not be called a regular service.

Q. Would it be called a regular service within the requirements of merchants unless vessels were put on and despatched regularly within the first and second half of the month?

MR. BALDWIN: I object to the requirements of merchants. There is no evidence here at all of what merchants require.

MR. KIRLIN: He has testified and so has a lot of other people. 4650

MR. BALDWIN: No merchant has been here to testify; all we have had so far are people identified with the defense either as defendants or people in their employ that have testified what merchants need or require.

MR. KIRLIN: You put in a lot of testimony about what merchants said rates were and I do not see why it is not as good to ask what merchants say their requirements are.

MR. BALDWIN: I have not asked a single question 4651
as to what merchants want, or suggest that they want, and I ask Mr. Kirlin to refer to any question I asked at all of the nature of the questions he has now propounded to the witness.

MR. KIRLIN: You asked him a number of questions——

MR. BALDWIN: Point them out where I asked anything about what merchants want.

MR. KIELIN: I cannot stop to point them out, but you certainly asked how he found out what rates 4652
the conference charged, and you took his evidence about what the merchants said about it, and now what the merchants say about their requirements of sailing is competent.

MR. BALDWIN: I don't think so. Reserve your objection.

Q. You can answer the question? A. I have forgotten where we were.

Q. You testified that it was your practice to try to make regular sailings and to do so you had a vessel in the first half and in the second half of the month? A. When I used

4653 the term "regular sailings," of course, that is a thing one man will interpret in one way, and another man in another way. But when I use the term "regular service" as applied to our business I mean we have two, and have had two and at the present time three as a rule of sailings a month. Not on stated dates, the same date every month, but we have those three sailings a month and we call that a regular service.

Q. My question bears upon the manner in which you say the merchants do their business, whether sailings put on
4654 and despatched in the first half and in the second half of the month constitute a regular service within the requirements of the trade.

MR. BALDWIN: I submit he has not shown himself at all qualified to speak about the requirements of the trade that embrace merchants either here or in Brazil.

THE WITNESS: That is the theory on which we book cargo.

MR. BALDWIN: I ask to have it stricken out.

4655

Q. And in your experience that has been satisfactory to merchants, has it?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent.

A. Our business has been conducted along those lines; we have not had complaints.

Q. What is the practice with regard to issuing bills of lading?

4656 MR. BALDWIN: You mean by his own company?

Q. By your line, in the Brazilian trade, under contracts or declarations made by the merchants or, say, the first half of any month; do you wait until you actually get the goods on board, or do you issue each bill of lading after you receive the goods and the ship is in port? A. We never issue a bill of lading until the steamer is in port. The goods need not necessarily be on the ship, but they must always be delivered to us and ready to load into the ship.

Q. Or the ship be ready to take it? A. Or the ship be ready to take it.

Q. And be in your possession? A. Be in our possession, 4657
according to the terms of the receipts.

Q. Under those circumstances it is customary for you to issue bills of lading if the merchants require them? A. Yes, if they require them.

Q. Do your bills of lading recite the shipments on board or received on board? A. Received for shipment.

Q. That is the general tenor of all the bills of lading, is it not? A. Yes.

MR. BALDWIN: Received for shipment?

THE WITNESS: Received for shipment, on steamer 4658
so and so.

MR. BALDWIN: Do you issue a bill of lading before you receive the goods?

THE WITNESS: Never; it is against the law as a matter of fact.

Q. When you said it was your practice in a general way to follow the conference rates, either charging them in full or shading them sufficiently to get the business, upon what information did you mean to state that you customarily 4659
acted in determining the amount of your rate as compared with the conference rate? A. On information that I received from the shippers who are friends of ours, and who naturally want to see us stay in the business.

Q. Did you ever find that merchants sometimes—— A. They try to put it over on us, but when they do they don't do it again.

Q. Do you find that the shippers sometimes report the rates a little lower to you than they actually are? A. They do that, but we usually take that information from people 4660
that we know tell the truth.

Q. In the matter of bargaining for freight rates, don't they sometimes quote to you as a rate something that they have not really got firm from the other people, but think they can get it from the other people?

MR. BALDWIN: If he knows the facts about it.

A. That may happen, but it usually happens only—I mean to say we take the word usually of men who are in the commission business and they want a rate which is low enough for them to get the business, that is all, because they make nothing from the freight rate.

4661 Q. In making that statement you did not make it on any comparison which you had yourself personally made of the tariff rate charged by the conference, or any enquiries made by you at the conference offices as to what their rates were on special commodities? A. Not so far as I know, no, sir.

Q. Mr. Slechta, you mentioned some cement rates as being $5.80, and you also referred to the freight rate of $6.20 and alluded to the fact that that represented a saving of about 40c. on the lighterage. In quoting those rates to
4662 us were you giving the rates which you actually charged in your business and were you taking into account the saving that the rate that you did charge made? A. Perhaps that is not quite clear; what I meant to say in that testimony was that that rate of $6.20 was what we actually charged the shipper, and we for that rate took delivery of the cement at the railroad piers in Jersey City.

Q. So that it was equivalent to a $5.80 rate? A. In the first instance, yes, and in the other instance our actual rate was—I don't care to say exactly what it was—but it was under $6 under the same conditions.

4663 Q. There is strong competition for all of this business, is there not? A. Yes; principally with Europe.

Q. Competition between you and the conference lines also, is there not? A. I understood that there was competition for the second lot we shipped; in the case of the first lot there was no competition of the conference lines at all so far as I could learn.

Q. Have you had trouble arising from the nature of the packages in which cement is packed? A. We have had no complaint.

4664 Q. Claims for breakage, I mean? A. We have had no claims or complaints at all as yet; I have been expecting them, however.

Q. It is really not packed in packages of sufficient strength for that trip, is it? A. There is that difficulty about all American cement. But, as I say, we have had about 25,000 barrels discharged in Rio so far and have not received any claims as yet. So, evidently, it is satisfactory. I should say I think that answer is not complete without my saying that we compelled the shippers to give us a guarantee and protect us against claims wherever there is an indication of frailty of packages.

Q. You said there were no rebates paid by your line at 4665
all at present? A. Yes.

Q. But there was some history of rebates; what is the history of it, so far as you are aware?

MR. BALDWIN: I object as immaterial, and as he knows nothing himself he cannot testify excepting by hearsay.

A. The history as far as I know is simply that the line charged a certain rate on commodities, plus a certain primage. 4666

MR. MONTGOMERY: When?

THE WITNESS: Previous to 1912.

Q. Outward? A. Inward; on inward freight; that is to say, in making up the bill of lading in Brazil at the various ports, particularly at Pará, the agent stated the rates plus, in some cases, 10% and 15% primage, which was refunded in New York. That is, the amount of the primage was refunded without condition.

Q. Was that a general rebate to come to everybody or 4667
special shippers? A. Anybody and everybody.

Q. Do you know whether the system had ever been any different? A. I do not.

Q. You have intimated the opinion that the reason you did not send coffee homeward was on account of the rebates which the conference allowed; were you aware of the fact that the circulars, in Petitioner's Exhibits 11, 12 and 13, which the Government claims were issued in South America, provided that until further notice any shipments by customers of the National Brazilian Lines, under the 4668
Brazilian flag to the United States, at not under conference rates would not prejudice shippers' claims to rebates?

MR. BALDWIN: I object to that part of the question; too indefinite. The proof is from the witnesses of the defense themselves upon the stand, that they have no doubt that they were issued by their principals down there.

Q. (Question read.) A. Yes, I am familiar with that clause.

Q. If the shippers could make shipments by your line

4669 without prejudicing their claims to rebates by the other lines, how are you affected unfavorably by the fact that the lines down there allow rebates under those circulars? A. In two ways: In the first place the very fact that we were required in order to have any rights to carry that coffee, so far as the conference line agreed that we did have a right to do so, only on the condition that our rate was equal to their own, and inasmuch as there was no provision on the part of our company for a rebate it meant that we had to charge a higher rate than the conference
4670 line actually received; and in the second place our service is fully half in chartered vessels owned and operated as vessels of the line, but at the same time chartered vessels, and not flying the Brazilian flag.

Q. You say you carry the coffee chiefly on your own vessels? A. Did I say "chiefly"? I think I did.

MR. MONTGOMERY: You said Arbuckles.

THE WITNESS: Yes, as far as Arbuckles is concerned, I am not sure that that is by any means true. As a matter of fact it has been carried pretty much
4671 indiscriminately by chartered and owned vessels, whichever one happened to be in position.

Q. If you wanted to charge the conference rates and return to your shippers the 10% you would be on an exact parity with the conference line so far as the different shippers were concerned from Brazil here? A. In other words, if we were willing to join the conference?

Q. No, quite independently? A. I could not say as to that. All I know is that the Brazilian Steamship Company
4672 has always taken the ground of refusing to have anything to do with rebates, under the terms of that agreement.

Q. Do you consider that the conference rate of freight from Brazil on coffee is the net rate or the rate which includes the percentage that is returned to the shipper?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent, and is not at all germane here. He is not here to consider that contract or that notice to shippers, or any other form.

MR. KIRLIN: I am not asking him to consider anything.

MR. BALDWIN: You are asking what he thinks about it.

MR. KIRLIN: I am asking for his opinion on a matter of commercial practice. 4673

MR. BALDWIN: There it is right there; it speaks for itself.

A. As a matter of common sense, I should say the actual rate for coffee on the conference lines was 52½c a bag; in other words, 50 and 5%, because, if a man shipped less than the minimum quantity on which rebates were given that is what he would have to pay.

Q. What do you mean by the "quantity on which rebates are given"? A. You are asking for my opinion; my opinion and understanding is that the rebate is given only on the condition that the minimum is a certain quantity above a certain minimum shipped, and that that rebate fluctuates, or rather, varies in proportion to the total amount of coffee shipped. 4674

Q. That is, it is a certain amount on the first 100,000 bags, and a certain amount more for—— A. Each 10,000 bags in addition.

Q. Yes, and other terms up to 300,000 bags are offered? A. Yes. 4675

Q. But whether it is the larger or the smaller amount do you consider the freight rate to be the gross freight rate charged, or the rate less the rebate, whatever it is?

MR. BALDWIN: I object to that for the same reasons I have already urged.

A. So far as that clause there——

Q. Not with reference to this clause; outside of that? A. I can only repeat what I said, that I would consider that the real rate on coffee. 4676

Q. That is the rate less the rebate? A. No, including the rebate, because it is conditional.

Q. But you say these shippers live up to it? A. Yes.

Q. So that they do get it back? A. If they ship 100,000 bags of coffee a year; a good many of them do not ship that much.

Q. Then as to that many you would not have considered the question of whether there were any rebates to be returned or not; you could then charge the same rate as the conference and you would be on a parity with them, wouldn't you, on all shipments of less than 100,000? A. As far as anything on the record is concerned, yes.

4677 Q. You make a practice as the other lines do for making contracts for large quantities covering a period? A. We do.

Q. Or covering a maximum number of tons for shipments to be made at intervals? A. We do, yes.

Q. Do you charge in those contracts the same rates that you do to the ordinary shippers who come during the same period and offer you smaller single shipments of the same kind of material? A. I don't think we do.

Q. It is the general practice to make a special rate? A. Yes.

4678

MR. BALDWIN: His practice, you mean?

THE WITNESS: It has been my practice.

Q. Have you prepared, or are you willing to prepare, a statement showing the amount of coffee that carried on your ships? A. The Government has asked hat and it is being prepared.

Q. What years is it going to cover? 912 inclusive.

4679 Q. That will include not only the A coffee, but whatever other coffee you carry? A. erything, irrespective of the shipper.

Q. Mr. Baldwin asked you some questions about your willingness to develop trade by starting new services here and there; I suppose you did not mean to intimate by your answer that you were willing to start a trade from any other port unless there were sufficient cargo there to justify it as an economical adventure, did you? A. As far as my company is concerned I cannot say what they would be willing to do, for the present; I would not feel inclined

4680 to advise our company or go about it personally, that is to say, open a service from any port unless I could see there was a chance of making a profit.

Q. Have you considered at all the question of running a line out of New Orleans? A. I cannot say that I have considered it. When I left Rio under instructions to take charge of this office, I was advised by the then president of the Company that as soon as the conditions in New York warranted it, I should attempt at least to see what prospects—that I should see what the prospects are of opening a service from New Orleans. Since then the management of our company has changed somewhat and I have had no further instructions along that line.

Q. Have you made any enquiries or given the matter consideration? A. No, sir, I have not. 4681

Q. Mr. Slechta, in translating the rate for kerosene into the equivalent rate of coffee you did not give us a comparison on the same basis in those cases; that is, you gave us in one case the measurement ton and in the others the weight ton; can you give us that comparison on a measurement basis entirely, for instance, how many bags of coffee do you compute occupy a measurement ton space? A. That is to say, 40 cubic feet. I must confess my ignorance as to exact figures on that. I could not say. My recollection is that it is about 15 to 16 bags. 4682

Q. 17—— A. A little over 17 in weight; it may be less than that in measurement.

Q. Isn't it about 12 in measurement? A. I really must confess ignorance; I never made the figures.

Q. You are coming back again to give some further evidence; won't you look at that and see whether, as a matter of fact, they do not stow 12 bags to the ton measurement and 20 cases to the ton measurement, so that the rates work out practically the same; will you verify that? A. I think that that must be in error. I think that coffee— 4683 coffee is certainly heavier than the same cubic contents of oil.

Q. Well, 12 bags according to my information go to a ton measurement and 20 cases—— A. To make 40 cubic feet?

Q. Yes, and 20 cases to a ton measurement? A. I will look that up.

Q. And on that basis, whatever the basis is, be prepared to translate those rates and see if they do not come out all nearly alike? A. I did that mentally the other day. 4684

Q. I think you were in error about that? A. Yes.

MR. KIRLIN: I think that is all for the present, but I shall want to ask some further questions after Mr. Baldwin has had a chance to look at the contracts.

Recess taken until two o'clock.

4685 AFTERNOON SESSION.

J. J. SLECHTA, recalled.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. You were asked by Mr. Burlingham on his cross-examination with reference to the re-organization of this Brazilian Line, and you said that it was actually reorganized at a time while you were on your vacation in the United States. Now, as a matter of fact have you any personal first hand knowledge of either the time of reor-
4686 ganization or that there was a reorganization, or the terms of the organization? A. I don't just know how to construct your term "first handed."

Q. First hand means, of your own personal knowledge, do you know of any of the facts about it? A. Certainly.

Q. Or is it hearsay? A. Well, it is hearsay, and the then president of the company told me the details.

Q. Well, that would be hearsay, wouldn't it? A. Yes, anything that I know is certainly hearsay or resay. I have had no official connection with the company and have
4687 no means of having anything to do with the reorganization itself.

Q. Well, you have never had in your possession any of the written or printed plans of reorganization, or agreement, or anything of that kind, have you? A. To be perfectly truthful and comprehensive, I did see copies of correspondence that had passed between the former head of the company and the Government.

Q. Well, that is not an answer to my question if there was a reorganization? A. They had to do with reorganization.

4688 Q. What is that? A. They had to do with reorganization.

Q. But you don't know the terms, do you? A. No, sir.

Q. You don't know the particulars of it, do you? A. I do not.

MR. KIRLIN: Is this cross-examination?

MR. BALDWIN: This was all brought out by Mr. Burlingham and not by me. I did not ask any questions about it.

Q. Now, with reference to the subsidy heretofore paid tc your line, which you mentioned here in your cross-ex-

amination was about $200,000 a year, was that subsidy 4689
entirely related to the New York service or was it a subsidy paid the line as a whole, for all its service? A. No, there was a special subsidy paid by the Government, or at least appropriated by the Government devoted or supposed to be devoted to the New York Service.

Q. And was this amount $200,000? A. That amount I am absolutely uncertain about.

Q. Well, when you said that your recollection was that it was about $200,000 a year? A. Yes.

Q. Do you wish to qualify that, if you don't know what 4690
it was? A. I don't know what it was. I think I said at the time that I was uncertain about the amount.

Q. But you said your recollection was it was about $200,000 a year? A. It may have been $100,000; I really could not say.

Q. And that was entirely discontinued in 1912, wasn't it? A. Yes, sir, 1911.

Q. Now, you said in answer to Mr. Burlingham's question that the firm of M. Barque & Company recently operated your company under charter? A. Yes, sir.

Q. Where did you get your information on that? Is 4691
that likewise hearsay evidence? A. No. I saw the certified copy of the act of incorporation, if you want to call it that; I don't know whether they call it that or not.

Q. You also testified that they had financial difficulties? A. Yes, sir.

Q. Which made it necessary for the Brazilian Government to step in and assert control. Do you know anything about the particulars or cause of the financial difficulties or anything of that kind, of your own knowledge? A. Well, the truth of the matter is that the Brazilian—Lloyd 4692
Brazileiro has also operated under restrictive laws which in a way can be likened to the American Merchant Marine Laws as much that it has been impossible for them to operate at a profit. In the first place, the number of the crew is absurdly large, and the Seaman's Union is so strong and is backed up by the Brazilian Law to such an extent that it is impossible for them to charge even unreasonable rates and make a profit.

Q. Is that true at the present time? A. Yes, sir, so far as the coastwise service is concerned.

Q. Do you know whether or not the losses that were sustained by the people who originally chartered—this

4693 M. Barque & Company were occasioned in the coastwise trade mostly or in part? A. Well, certainly mostly, because the extent of the service was so much greater. The New York service is a mere bagatelle compared to the others.

MR. KIRLIN: He said whether it was occasioned——

THE WITNESS: In part he said.

Q. Mostly or in part, I said? A. Yes, mostly by the
4694 coastwise service. They had about 65 vessels in operation on the coast.

Q. As compared with how many in the other? A. Well, at one time they had seven or eight of their own vessels in the New York service.

Q. And then the business of the Lloyd Brazileiro up to that time of the difficulties was so much greater, the number of vessels operated very much greater, than the business of the vessels operated in the American traffic? A. Yes, sir.

4695 Q. These restrictions or exactions that you speak of that make it impossible to operate at a profit, did they apply also to the trade with the United States? A. To a somewhat lesser extent, but so far as the crew is concerned, of course, they are required to have the same relative number of crew, and they have to feed them in the same way, and they have the same difficulties in getting any kind of harmonious relations with the Seaman's Union there so as to enable them to get efficient men.

Q. In other words, then, in operating your steamers in the American trade, because your company is a national
4696 company flying the Brazilian flag, you are under restrictions and exactions which do not obtain or apply to vessels of other countries?

MR. BURLINGHAM: He has not said so.

MR. BALDWIN: I am asking him.

THE WITNESS: Yes, sir. I think it is a matter of common knowledge that vessels operating under the British and German flags particularly are operated as economically as any in the world.

Q. That is not quite responsive to my question. The same restrictions do not apply to the foreign countries

operating—— A. No. I meant to be responsive, of course, 4697
and that is true. The restrictive act with reference to the Brazilian Law don't apply to any except national vessels.

Q. Yet in spite of these imposed burdens growing out of the nationality of the company, if your company could get return cargoes from Brazil to the United States it would be a profitable business for your company to operate, charging the prices you do, and even less, wouldn't it? A. I think I have convinced my own company that I can operate the line at a profit under those conditions.

Q. Well, you say—now, that is your judgment, isn't it? 4698
A. Yes, sir.

Q. I don't suppose you have any knowledge, any definite knowledge of any kind that in the losses that were made by the charterers of the Lloyd Brazileiro, whether those losses were proportioned between the two services, the American or coastwise? A. Well, of course, so far as chartered vessels are concerned——

Q. I am not speaking of chartered vessels. I am speaking of the firm that operated your company under charter? A. No, I have no means of knowing. 4699

Q. Now, in answer to one of Mr. Burlingham's questions you stated that the rates you make are slightly less than the rates of the conference lines. The question was "And that rate, you say, you made slightly less than the rates of the conference lines?" To which you answered, "At times it is slightly less,"—and I suppose it means advanced at times—"Is even equal to it, and at times is considerably less," and you give a concrete example. With reference to the contract 10,000 tons of car material you stated that you understood the shipper had a rate of 15½ 4700
cents per cubic foot and we took it at 14½. How much would that amount to in dollars and cents on that shipment, the difference between the rates? A. Of course, this can only be approximated. My recollection is that there was approximately 360,000 cubic feet, it might have been more.

Q. Give it approximately? A. That would make a difference of a cent a foot, that would be $3,600.

Q. On the whole ten thousand tons? A. Yes. That would be 360,000 feet, $3,600.

Q. Did I understand you to say, Mr. Slechta, heretofore, that your rates on high class cargo were considerably less

4701 than the conference rates, but on the heavy or bulk cargo it was slightly less. Is that right? A. Yes, sir, this is my impression.

Q. Do you know how many customers you have on your list, roughly speaking? A. We have probably about 450 to 500 regular correspondents, people who throughout the course of the year make regular shipments by our line, sometimes two or three shipments, and, others, of course, many.

Q. Are they diversified through the country? A. Prob-
4702 ably 95 per cent. of those are in business in New York.

Q. Are some of them, or a great many of the customers that live here, are they commission men that collect their cargo in various parts of the country? A. The largest shippers are, almost without exception, large commission merchants who, of course, do buy their cargo wherever it originates.

Q. Isn't it a fact that almost all of the cargo that goes out originates in other parts of the United States than in New York? A. Yes. It is certainly true that so far as
4703 Brazil shipments are concerned a very small proportion of the cargo could be said to actually originate in New York City.

Q. Isn't it a fact that most of it originates outside of New York State? A. Yes, certainly the majority of it originates outside of New York State.

Q. It is also true, is it not, that a great per cent. of your heavy or bulk cargo originates in the southern states? A. Well, there is a large proportion of it. It is certainly a minority, but it is a very large proportion of it.

4704 Q. Have you any idea where most of what you call this high class freight originates?

MR. BURLINGHAM: You mean where it is manufactured, if it is manufactured?

MR. BALDWIN: Yes, or produced.

THE WITNESS: Most of it originates in the industrial districts comprised in the New England states, and as far south as Philadelphia, west as far as Pittsburg, Cleveland and Cincinatti.

Q. Now, some of it comes from even further west, doesn't it? A. We have a very few shipments of that class of freight from Chicago and vicinity.

Q. Now, in order to get this high class freight you have testified that you had to make considerable concessions. Just state why you have to make those concessions? 4705

Question withdrawn.

Q. Now, is it true or is it not true that shippers on your line have to pay any greater premium for their insurance than they do on the conference lines? A. They do not.

MR. BURLINGHAM: You mean his own or his chartered steamers? 4706

MR. BALDWIN: On any of them.

THE WITNESS: They do not as far as I know.

Q. So that in making this concession you don't have to take into consideration the insurance premium or the rate? A. We do not take the insurance premium into consideration, not any consideration.

Q. I have understood you to say, Mr. Slechta, that, with the exception of the Lamport & Holt Line, their passenger steamers, that your boats averagely compare in size and speed with those of the other lines running from this port? 4707 A. Yes, sir; they are approximately all the same class of boats.

Q. So the concessions you have made are not based on that inferiority? A. No.

Q. I likewise understood you to say that your facilities for handling your shipments were quite equal to others? A Yes, sir.

Q. I have also understood you to say that your boats are fairly regular on their berth? A. Yes, sir.

Q. And do you know whether they are as regular upon 4708 their berth as the lines of the other conferees, or the boats of the other conferees outside of the passenger steamers of the Lamport & Holt Line that get this 10% primage? A. As a rule, I think the sailings, as I have studied the advertising lists, and the sailing lists, are made approximately as regularly as the other lines.

Q. Well, do you have many complaints from your shippers as to the way you handle or deliver your goods? A. No, sir. Our only complaints are with reference to the long delays of vessels in Rio de Janeiro which are occasioned by the conditions of the port down there over which we have no control.

4709 Q. That would apply to any steamer, wouldn't it? A. Yes, sir.

Q. Of any line? A. Yes, sir. The only exception would be in the case of vessels carrying cargo for Rio de Janeiro and Santos incidental to a voyage further south, in which case they carry very much less cargo via Rio and Santos. The bulk of their cargo goes to the Plate.

Q. Generally speaking, on the average, your boats in the time they actually make from here to their ports of destination in Brazil, are comparable with that of the confer-
4710 ence lines outside of the passenger steamers of the Lamport & Holt? A. Yes, sir, if they make the same ports; there is no appreciable difference.

Q. So that none of these things that I have eliminated have been taken into consideration in making the concession to shippers to get this high class freight? A. No, sir. I think, now that you have covered that ground, I think that I can say if there is such a consideration, the only one it would be in effect, that probably the majority of our steamers carry very much heavier cargoes for Rio than the other lines and as a consequence they are billed through
4711 entire, and for that reason possibly, it is necessary to give shippers special inducement to ship general cargo on our lines because of the incidental delay.

Q. That is the only reason that you know of now? A. Yes, sir.

Q. And yet in spite of all that, I understood you to say in answer to Mr. Kirlin's question that of the high class cargo you thought you got a fairly good proportion of the business? A. Yes. I may be mistaken in that. So far as I know. It is simply from a discussion of those things
4712 with our shippers that I know anything about it at all. Then, of course, following the course of the business generally, I assume that we get a fair proportion of it.

Q. Now, Mr. Daniels testified at page 211 of the record that on all general shipments carried on the fast boats of the Lamport & Holt Line 10% primage was charged in addition to the freight rates. So that notwithstanding that fact, your boats, comparing generally with the boats of the other conferees, you have been carrying that class of cargo at less rates than the conferee lines, is that right? A. Yes, sir, that is right.

Q. Now, you were asked by Mr. Burlingham how you

accounted for the increase in the amount of gross freight 4713
which you figured out for 1911 over 1910, or maybe 1912 over 1911? A. 1911 over 1910.

Q. Which you figured out to be about 40%, do you remember? A. Yes.

Q. And your answer was that the rates were undoubtedly high, and the space was occupied by a better class of cargo which naturally paid a higher rate of freight? A. Yes.

Q. Now, just explain that a little more fully. I did not get quite its significance? A. That was only one reason. There are other reasons. It is just this, that the general 4714
class of cargo as regards the rate which shippers could afford to pay and still get the business had, I assume, very largely, from a very brief study of the manifests, had increased in degree; that is to say, the quality was better in 1911 than in 1910.

Q. They had a great increase in business, had they not? A. They certainly had, in volume and in class of manufacture.

Q. That means also that there was an increase in the quality of the commodities that went from here? A. Yes. 4715
But aside from that, there were very large increases in the rate of steamship lines all over the world in 1911.

Q. You mean the rates charged? A. Yes, sir.

Q. That is to say as there was demand for tonnage the steamship lines put up the rates? A. Yes, sir.

Q. Now, Mr. Burlingham further called your attention to your testimony before the Alexander Committee and where you stated you were paying four shillings and six pence per ton; and you further stated before that committee, as he read from the minutes of that committee, that you at the present time were paying approximately 4716
double that.

MR. BURLINGHAM: At the time he testified, you mean?

MR. BALDWIN: Yes, when he testified down there.

Q. You meant at the very time you were testifying, that you were paying—— A. Yes, sir, at that very time we happened to have one steamer we were paying an exceedingly higher rate for.

Q. Was there any special or particular reason why you had to pay that almost doubled rate? A. Yes, sir. At that

4717 particular time, in the latter part or latter three months of 1912, the rates were very high and especially on prompt business, and if we happened to need a steamer for prompt loading, the vessels that were in readiness for that business were so scarce that owners simply held the rate way up out of position.

Q. That was rather an isolated case than the rule that was doubled? A. It was in a way. As a matter of fact, as much as eight shillings was actually paid by a good many charterers for the same business. The highest we paid
4718 was seven shillings six pence, and that was an isolated case. I think except for that case we paid nothing as high as seven shillings.

Q. Nothing as high as seven? A. No.

Q. What about your rates at the same time? A. Well, they were practically the same during the whole of 1912.

Q. In other words, although because of the necessity for prompt service and the fact that the charter rate had gone up because of demands, your rates that you actually charged the shippers remained about the same during the
4719 whole year? A. Yes, sir, that is true.

Q. So that in that year, and having that period of time in mind, your rates in no sense charged to the shipper were based upon your chartered rates, were they? A. No. In fact, I chartered ships at a rate I knew could not possibly be profitable simply in order to fill our regular sailing schedule.

Q. Now, Mr. Burlingham further questioned you about your testimony before the Alexander Committee and he read it out in which you stated that your company had lost $2,000,000 in six years. Is that merely a guess of yours?
4720 A. Entirely so, yes.

Q. What is that? A. That was an estimate on my part.

Q. You knew there was a large loss? A. Yes, sir.

Q. What was it that brought about that loss? A. Well, beginning in 1907 and 1908 the freight rates from New York were very low, and the freight on coffee during which year the Lloyd Brazileiro carried more than they have at any time since, in 1907, 1908 and 1909, was very low, and of course, at that time the service was much as now about evenly divided betwene chartered and our Brazilian boats; I think there was somewhat more of the Brazilian boats than the chartered boats, and, of course, the expense of

operating the Brazilian boats floating the Brazilian flag, 4721
was equally great as it is now, and these two facts militated very strongly against the company being able to operate at a profit. And then beginning in 1910 when the freight rate began to go up from New York and the Lloyd Brazileiro began to get a larger share of the outward business, we got less and less coffee, so that we labored under the necessity of operating the business pretty much as carrying cargo one way and coming back in ballast the other way.

Q. You mean you got less and less coffee. Do you mean 4722
by that that you practically——

MR. SPOONER: Ask him what he does mean by that.

MR. BALDWIN: I did not ask any questions about the loss. I think I may put it in my own way.

MR. SPOONER: I will object to the form of your question.

Q. Well, was it or was it not due in any sense, in any way, to the fact that you could not get return cargoes here to New York from Brazil that affected this loss? A. I con- 4723
sidered the fact of the Lloyd Brazileiro did not get its share of coffee beginning in 1910 on is principally responsible for the losses the company suffered in carrying on its operations to this port.

Q. Well, your inability to get coffee due to what? A. Well, due to the fact, as I stated the other day in the direct examination, the fact that shippers at that time began to make contracts in pursuance to the agreement between the three conference lines.

Q. You mean these rebate contracts? A. Yes, sir. 4724

Q. Well, you say the date in 1910, and the conference was formed in 1908? A. Yes. During, I am not quite certain, 1909, but I know that during 1908 the Lloyd Brazileiro carried very large shipments for Arbuckle, owing to some operations that they were carrying on at that time which made our shipments aggregate very large, although the rate was very low.

Q. Were you getting coffee from any other shippers at that time? A. Yes, but most of it was Arbuckle's.

Q. Most of it was Arbuckle's? A. Yes.

Q. Now, did other shipments fall off then? A. After they had shipped those large engagements they had on ac-

4725 count of valorization their shipments fell back to the normal amount.

Q. What year was that? A. As I recollect it now it must have been about the middle of 1909 that their heavy shipments dropped off.

Q. And was this loss then, the major part of it or any part of it, occasioned after that because of your inability to get return cargo? A. I considered that the cause of the inability to operate at a profit.

Q. You have already testified that while you were vice-
4726 consul down there that you knew from the consular invoices that most all of the coffee shippers with the exception of Arbuckle were patronizing the conference lines exclusively, that is right, isn't it?

MR. KIRLIN: I don't think he said exclusively.

THE WITNESS: I think I testified that beginning in 1908 they began to do so; certain ones dropped off shipping by Lloyd Brazileiro; so that right at the beginning of 1910 or possibly toward the end of 1909 very few outside of Arbuckle was shipping
4727 by Lloyd Brazileiro.

Q. And that was about the time of the installation of this rebate system down there between the conference lines? A. Yes, sir; following that.

Q. And at that time you left there in 1910, was it not? A. 1911, the latter part.

Q. Were the coffee shippers other than Arbuckle shipping very largely or entirely over the conference lines? A. They were, yes.

Q. And since that time that you have been up here and
4728 in charge, your company has not been able to get return cargoes from the coffee shippers? A. No, sir.

Q. And you have already testified that coffee is the one great staple of shipments? A. It is the only shipment from the south ports, the only cargo from the south ports.

Q. Now, in giving your estimate of $2,000,000 loss by your company do you know what portion of your loss was made after this rebate system was installed there? A. No, sir, I do not.

Q. Do you know what portion of it was made after the line was taken over from the original people who operated under charter? A. No; I really have no way of apportion-

ing the losses. It is simply an estimate on my part from 4729
start to finish. I don't know anything about it. I know what their receipts have been and what their expenses have been at this end; I do not know accurately enough what their expenses at the other end have been to give an accurate estimate of what the losses were. That there were losses I know, but just exactly how and when they occur I could not say.

Q. Well then, your ability to operate at a profit is conditioned entirely upon getting reciprocal cargo? A. Just now, yes, sir. 4730

Q. Do you know what regular lines operate from Brazil to Europe outside of the Royal Mail Steam Packet Company, the Hamburg Lines, the North German Lloyd and Lamport & Holt? A. There are three combined Italian Lines called the Italian Service; the French Line, two French Lines.

Q. What would be the effect on your ability to get return cargo to New York if your line operated also a line of steamers to Europe? A. I think that would undoubtedly help us. 4731

Q. In what way? A. Because shippers who chose to avail themselves of the opportunity to ship by our line to the United States would feel assured that they would not be subjected to difficulties in getting steamships going to Europe.

Q. Over the conference lines? A. Yes, sir.

Q. And they would not be prejudiced in any way because they were cut off from rebates? A. Exactly.

Q. Now, Mr. Burlingham further questioned you with reference to the rates charged from New York to Rio as 4732
compared from Rio to Porto Alegre and called your attention to the difference of the mileage from New York to Rio which was 4,748 miles and from Rio to Porto Alegre about 700 odd miles and the rate from the former is $6 to $7 while the rate from the latter is $6. You remember that, don't you? A. Yes, sir. That is simply an estimate of mine. I have some figures now that are more accurate on that.

Q. You also further stated that it was more profitable to handle the business on your figures from Rio to New York than from Rio to Porto Alegre. Why is that? A. Because the cost of handling our vessels operating our ves-

4733 sels on the coast and handling a cargo from Rio Grande to Porto Alegre, that that rate is not commensurate with the expenses.

Q. Well now, what constitutes this large cost for your other service? A. In the first place the terminal facilities in Rio Grande and Porto Alegre are bad and the fact that the bar across the entrance to the port there is very shallow frequently causes a delay of sometimes, as much as four or five days to the steamer. All of that makes it an expensive section of the country to carry freight to.

4734 Q. You say you have the exact figures on that, have you? A. Yes, sir, I have. I told Mr. Burlingham this morning the figures I have were in force at the time they were published in 1910, and since then they have been somewhat reduced. I don't exactly know what the proportion is, but I think 40 per cent. reduction, which extends to sugar, cotton, coffee, lumber, meat and cereals, and other products called domestic products exported from the ports of Brazil to other ports in Brazil. For instance, from Rio Grande to Bahia, $1.47 per 35 cubic feet or $2.96 per ton
4735 weight. I don't understand the reason for the difference there, but that is the way they publish the schedule. Rio to Pernambuco per cubic measure of 35 cubic feet approximately, $2.22; per ton $4.44; Rio to Pará per cubic meter, 35 cubic feet, $3.90; and per ton $7.80. Rio to Rio Grande per cubic meter, 35 cubic feet, $3.20; and per ton $6.40. In the case of the latter, Rio Grande this gives the general ratio on general merchandise For instance, products which are not domestic exports, the rates would be as against $3.20 per cubic meter for these other commodities
4736 mentioned, $4.46; and as against $6.40 would be $8.92 per ton.

MR. BURLINGHAM: I was asking about flour and so forth.

THE WITNESS: The second rate there would apply.

Q. Well now, you have stated in a general way that it was more profitable to handle the business on these figures from Rio to New York than from Rio to Porto Alegre. Now, you have also just now stated in a general way about what the cost of doing that business is. Now, what have you to say in reference to the cost of doing that business

to all of those ports? A. I simply can say this from what 4737
I have seen of the published figures of Lloyd Brazileiro, even in years past, that in spite of those normally high rates, apparently high rates, they might be here considered unreasonable rates, they do that business at a loss.

Q. Well, what occasions the loss? A. Well, simply the high cost of operating their ships and the high cost of their organization generally. They operate it always under the supervision of the Government, even when it was a private corporation operating under charter from the Government, and it is just like the railroads, for instance, the Govern- 4738
ment railroads in Brazil; they have about two or three times as many employees as they need, yet the Government requires them to have them.

Q. On this coastwise trade, those Government exactions that you testified to a while ago, of the number of men they require, that applies there? A. Yes, sir.

Q. Mr. Burlingham also particularly enquired about the rate from Rio to Rio Grande Do Sul, asking if there was any difficulty there about bars. Is it a fact there is a four-
teen foot bar at Rio Grande Do Sul? A. Yes. 4739

Q. Now, you testified in answer to Mr. Kirlin's question or Mr. Burlingham's question, I have now forgotten which, that you give a better rate or a lower rate, to a large shipper than you would to a casual shipper? A. Yes, sir.

Q. Well, that would apply to any and every person who would be a large shipper? A. Surely. Every man who comes to us with business——

Q. Enough. A. Or approximately the same sort, gets exactly the same treatment.

Q. In other words, you would not compel him to confine 4740
his shipments to your line in order to get that rate? A. No, sir. We do make contracts with shippers to give us all their shipments, but they are not made with any conditions at all.

Q. You also testified that you would make a rate more favorable for a shipper who makes a contract than with a casual shipper who just comes along and offers his commodities to be shipped? A. Yes, sir.

Q. You would also give the casual shipper the same opportunity if he would make a contract with you? A. If he would make a contract and agree to ship approximately the same amount

4749 Q. That is twenty-one sailings. I mean how many ships; that is what I want to know? A. Why, eight of those ships. There were eight ships of our own operated that year. Some of them only made two sailings.

Q. Which year 1910 and 1911? A. 1910.

Q. And how many were chartered? A. Five chartered. There were nine of them, as a matter of fact; two of them were here only to be repaired and carried cargo upward only.

Q. Well, how many of them were there in 1911? A.
4750 Eight Brazilian ships in the service and eight chartered.

Q. And do you know how many yearly contracts were made during those years? A. I could not say.

Q. Approximately? A. I haven't the slightest idea.

Q. Was there a good many? A. Of course, practically all cargo that is booked is on contract, so far as that is concerned; some of it is merely verbal contract, but it is all contract.

Q. I concede that perfectly good if it is verbal? A. I have no way of knowing.

Q. Well, when these yearly contracts are made, in view
4751 of the fact that the number of boats of your own are limited, they are made upon the expectation that you will have to charter vessels to fulfill the terms of the contract to carry all of your shipments; is that right? A. That is true, yes, sir.

Q. So that the rates here then that are quoted in these yearly contracts are not conditioned at all upon charter rates, are they? A. No, sir.

Q. Now, you have testified about the length of time it took to load 30,000 bags of coffee on the *Strathclyde* at
4752 Santos? A. Yes, sir.

Q. And I understood you to say five days, which would include the time that part of the cargo was being discharged, and the 30,000 bags were being loaded; is that right? A. Yes, sir. My meaning was that taking a hypothetical case, as we usually do, for the average amount of cargo for Santos, the ship is practically empty by the time it discharges at Rio and usually begin loading cargo of coffee almost as soon as she gets in port if the coffee is ready to be loaded.

Q. Well, in any event would not the loss of time in the loading be in some part, at least, compensated by the gain of time with the vessel from Santos to New York with a

part cargo than for the time taken in ballast? A. The steamer would make better time loaded than in ballast. 4753

Q. With reference to carrying a sufficient amount of coal for steam purposes down and up, if you really were pushed for space because you had more than a full cargo, would it not be possible to carry some of your coal on deck? A. We have done that, yes.

Q. And therefore you don't shut out any cargo, do you? A. We never have shut out any appreciable cargo because there was no room in the ship.

Q. Well, in order not to shut out any cargo you could very easily do that, couldn't you? A. We have carried as much as 150 tons on deck. 4754

Q. Now, is it not so that the port charges which your line is required to pay are the same port charges which all lines have to pay? A. Exactly the same.

Q. Now, you said that if you were carrying coffee at 26c a bag, I suppose it is? A. Yes.

Q. It would be remunerative if you had a cargo only from Brazil to New York, do you remember that? A. Yes, sir.

Q. Well, isn't that true of whether the rate charged upon any commodity is remunerative or not is whether or not you would get a return cargo? A. Yes. As a matter of fact we do have cargo outward. 4755

Q. So that if you could get a return cargo at 26c a bag from Brazil to New York, in view of all the cargoes that you have from New York to Brazil, that would be remunerative, wouldn't it? A. I consider it so. I consider anything remunerative that would give a profit or leave a balance after having paid for the delay of the steamer in taking the cargo, and in discharging it and the expense of handling it. Anything over and above that would be remunerative. 4756

Q. By reason of your outward freight, is that the idea, the rates that you get? A. The steamer has to go back to New York.

Q. I say by reason of what rate you get here? A. Yes, sir. Even if the rate was so low that the steamship is bound to be operated at a loss anything that you could get in the way of cargo that would leave that surplus, leave such a balance over and above the cost of handling the cargo, and the expense of delay to the steamer, would still cut your loss down so much, so it must be remunerative.

4757 Q. But my point was that if you could get return cargoes from New York to Brazil in view of the rates that you get on commodities shipped from New York to Brazil, it would be a remunerative rate, wouldn't it? A. Yes, sir.

Q. Now, you were asked by Mr. Kirlin this morning with reference to those shippers in Brazil who did not ship as much as one hundred thousand bags in a year, and what effect with reference to the business, how would that effect you, do you remember that? A. Yes, sir.

Q. Well, now, how about those shippers? Are there
4758 some of them that some years will have one hundred thousand and some years not one hundred thousand? A. Yes, that is true. Some shippers will in some years have a prosperous business and ship more than one hundred thousand bags and other years it will fall away below that.

Q. As a matter of fact, you don't get their business, do you? A. No, sir.

Q. Now, Mr. Kirlin further asked you whether you would open a service to any new port if there was business there sufficient to warrant it. Do you remember that? I asked you on the direct examination at page 1932 if your line
4759 was ready and willing to start a service to take freight to any point in Brazil in order to foster increased business? A. Yes.

Q. And your answer was, yes, so far as it is compatible with the character of our steamers and with the cargo, if any, that we might be able to carry.

Q. I understood you to say this morning in answer to Mr. Kirlin's question to have had some conversation or conference with your principals with reference to starting a service to New Orleans, and then there was a change
4760 in the management in some way and that matter had been dropped? A. Yes, sir.

Q. Now, have you ever looked into the question as to whether or not there is a large amount of merchandise that is available for shipment to Brazilian ports in and about the Gulf ports which comes to New York because it can't go from Gulf ports direct? A. Why, I of course know there is a large amount of cargo that originates in the southern states contiguous to New Orleans.

Q. And is it a fact there is no regular line of steamers of any kind available for shippers from any of the ports, that is Gulf ports, to Brazil? A. No regular lines, no sir.

Q. And all of the products that leave the United States,

practically all that leave the United States that originate in and about the territory contiguous to the Gulf ports have to come to New York, do they not, if they go over a regular line? A. I would not say that, because a great bulk of the cargo shipped from this port goes in chartered steamers. 4761

Q. Isn't it a matter of fact that a very small per cent. goes in chartered vessels? A. No.

Q. I mean outside of lumber? A. Yes, outside of lumber, that is true.

Q. Has to come to New York? A. Yes, sir. 4762

MR. KIRLIN: Resin?

THE WITNESS: No, I think that while the chartered ships carry lumber they also carry resin. I think that is pretty evenly divided.

Q. It has to come to New York? A. Yes.

Q. Well, then, when you said in answer to my question the other day that the line would be willing to originate new service, what did you mean by that? A. Well, I meant just this: that what I had in mind, and what the company had in mind when we were considering putting in a service to New Orleans was that as long as the situation is as it was in reference to the return cargo to Brazil that it would be foolish to try to get cargo from New Orleans if we could not get it from New York, and a line, regular line, from New Orleans could not be made to pay, certainly if it could not be made to pay to New York without a return cargo, because I considered New York has a larger proportion of cargo that helps to make the steamship business pay, available than has New Orleans, while of course as a matter of fact there is enough business there, in my opinion, to—— 4763 4764

Q. For the establishment of this service? A. Yes, if there was any opportunity to carry upward business.

MR. BALDWIN: I offer in evidence the tabulation of the steamers in 1909, 1910, 1911 and 1912. I believe we have had 1907 and 1908 already in, showing the points of destination, cargo carried and carrying capacity.

Marked Petitioner's Exhibits 239, 239a, 239b, 239c.

4765 RE-DIRECT EXAMINATION by Mr. Montgomery:

Q. Did I correctly understand your answer to Mr. Kirlin this morning? I think you testified first that you carried about 87 or about 90 per cent. rough cargo—of the cargo you carried about 90 per cent. of it was bulk stuff? A. On the average that is true. Yes, sir. In one particular ship that I looked up it was 87 per cent., in one particular steamer.

Q. And you said that ran low? A. That ran rather high in high class cargo.

4766 Q. In high class cargo? A. Yes, sir.

Q. Then I understood you to say that your impression was that the other lines carried about the same proportion of rough cargo and high class cargo that your line carried; is that what you intended to say? A. That is what I intended to say, and I qualified it by saying I had no way of knowing.

MR. BALDWIN: That is a guess then?

THE WITNESS: That is a guess.

4767 Q. That is to say, as to your line you looked up one steamer? A. Yes.

Q. That is the 87 per cent. is an accurate computation? A. Yes, that is an exact computation.

Q. As to the other line, you don't know anything about it? A. No.

Q. Now, about the rebates of 10 per cent. or 15 per cent. that you understand were paid by your line from Pará; they were paid to everybody? A. Yes, sir.

Q. And there was no distinction made, no tie of loyalty
4768 to your line? A. No condition whatever attached to the payment.

RE-CROSS EXAMINATION by Mr. Burlingham:

Q. You said that in 1908 you carried large shipments of coffee for Messrs. Arbuckle. You must have got that from your records because you were not with the company then? A. That is simply my recollection of the records.

Q. You have those records here? A. They are being prepared for Mr. Baldwin now.

Q. Will you produce records or a copy of them which will

show how much coffee you carried for the Arbuckles in those years, 1908 and subsequently? A. I think that is all on file here in the office. 4769

Q. May I see them?

MR. BALDWIN: Yes. (Producing papers).

THE WITNESS: My recollection was that this showed how much of it was for Arbuckle, but it simply shows the number of bags of coffee. Arbuckles themselves have put in a statement here showing how much they shipped by our line.

4770

Q. Please explain this document which you have just produced? A. That is simply a memorandum that I handed to Mr. Joyce showing the name of the steamer, the date of arrival here and the number of bags of coffee on the steamer.

Q. From 1908 through 1912, is it? A. That is right.

Q. This does not show how many bags of coffee were carried for Arbuckles, but you can tell how much you carried? A. Well, Arbuckle put in a statement here of their own showing that. I can give it from our reports. I can go all over our reports and figure it out. 4771

Hearing adjourned to June 26th, at 10.30 A. M.

New York, June 26, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

STANLEY D. MONTGOMERY, Esq., ERNEST E. BALD-
Esq., for the Petitioner. 4772

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles Burlingham, Esq., and Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*

MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin, Esq., and M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

MESSRS. SPOONER & COTTON, by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

J. J. SLECHTA recalled.

RE-CROSS EXAMINATION continued by Mr. Burlingham:

Q. Are you prepared this morning, Mr. Slechta, to give

4773 us any information as to the amount of coffee you carried for the Arbuckles in those years? A. I have made up a statement I just handed in showing the total amounts carried, but it does not show the amounts carried for Arbuckle. I could make that up, but it would be very difficult.

Q. It is easier for the Arbuckles to do than you I suppose? A. Yes, sir.

MR. MONTGOMERY: We have a list of that from the Arbuckles, Mr. Burlingham.

4774 Q. What is the total per year approximately? A. Somewhere I gave Mr. Montgomery a statement showing the total bags each year, quite a while ago. This shows there the amount shipped on each steamer, Mr. Burlingham. There is still another list which showed the total bags each year.

Q. I can add it up here? A. Yes, you can get it from that. The totals were on yellow sheets I think.

Q. I think you said that the coffee shipments of the Arbuckles, or the coffee shipments that you carried fell off
4775 largely in 1909? A. I may have been inaccurate about that.

Q. Was it 1910? A. Possibly it was 1910.

Q. And to what do you attribute that? A. My reasons for that were simply a surmise. I know the Arbuckles had a lot of valorization coffee to carry during, it must have been 1909, but my impression was that it was earlier than that; it may have been 1909.

Q. I made a rough calculation here and I find that in 1908 the shipments were 302,000 and in 1909 they seem to have been over 375,000, but in 1910 they seem to have fallen off
4776 considerably.

MR. SPOONER: When was the valorization inaugurated?

THE WITNESS: It was inaugurated in the latter part of 1907; but my recollection is that those large shipments for Arbuckle were not made until either the latter part of 1908 or possibly early in 1909.

Q. That was the letter which Mr. Montgomery was kind enough to produce, dated February 21, 1913, addressed to him by Arbuckle, and that purports to give all of Arbuckles' shipments by your and other vessels; you will ob-

serve that apparently a falling off was had in 1910, wasn't 4777
it? A. Yes; in 1908 they evidently chartered most of their steamers. Here on the record in 1910 they apparently—approximately 265,000 bags, 265 upwards thousand bags were carried in chartered boats, while in the same year about 160,000 were carried in three of the Lloyd Brazileiro vessels, and evidently that large quantity carried in 1910 in their chartered vessels would account for the smaller quantity carried by us in 1910.

Q. Why didn't you get their shipments for that year? A. It would be mere guess on my part to say. 4778

Q. We would like to have it?

MR. BALDWIN: I object. We don't want any guessing here. We have been asking him to surmise on a good deal of this stuff.

Q. Evidently they preferred to charter that year rather than to ship by you; was it on account of the market? A. I could not say.

MR. BALDWIN: If you don't know I think that is sufficient. 4779

THE WITNESS: I said I did not know.

MR. BALDWIN: Then don't guess.

THE WITNESS: I am not guessing.

Q. I would like to have your opinion as to it; you are very familiar with all these things?

MR. MONTGOMERY: Not in 1910; he was not familiar with it at all.

MR. BURLINGHAM: He has testified up to 1908 and he seems to know about it. 4780

MR. BALDWIN: He cannot testify to the reasons why Arbuckle sent—if they did—what he just now mentioned from Arbuckle's letter by chartered vessels. Mr. Jamison and Mr. Humphrey will be here in a few minutes and they will know about it.

MR. BURLINGHAM: This gentleman is on the stand and I put the question to him.

MR. BALDWIN: He cannot be asked to guess. He says he does not know.

MR. BURLINGHAM: I want his opinion; that is what I am asking for.

7781 MR. BALDWIN: You cannot give an opinion on fact.

MR. BURLINGHAM: He can if you argue it out with him.

THE WITNESS: May I be allowed to explain why I don't know? Those rates on coffee were made in Rio de Janeiro by the Lloyd Brazileiro, and whether they did not care to make rates that were low enough so that Arbuckle would prefer to ship by them rather than to charter I don't know. I assume that might be the case.

4782 Q. The relation of your company to Arbuckle was purely business relations, I suppose? A. Absolutely, of the coldest-blooded kind.

Q. The conference lines had nothing whatever to do with preventing you getting Arbuckle's coffee in 1910, had they? A. Not as far as I know.

Q. And was there a general falling off in shipments of coffee from the Brazils in 1910 on account of this valorization scheme? Or for any other reason? A. The crop in 1910 was somewhat below normal. It was, of course, for
4783 that reason shipments were not as large as they had been during the heavy shipments of 1907 and 1908.

Q. Do you attribute the heavy losses of your company, which you have testified to or given an estimate of, to the failure of your company to get coffee and bring it from Brazil to New York? A. I should qualify that by saying a great deal of that coffee you see on the record as having been carried was carried at ridiculously low rates.

Q. Unprofitable rates? A. Unprofitable rates.

Q. So you think that may be one of the causes of the loss?
4784 A. Some of that coffee was carried at 10c. a bag, I believe.

Q. That was absolutely unremunerative to the lowest point? A. We consider it so, yes.

Q. The question I press is, whether you attribute your losses to the failure to carry coffee, and to that alone? A. Well, I think my testimony in reference to that point yesterday will stand. I attribute it to a number of things. In the first place, the Lloyd Brazileiro in its early years was not in a position to get the best rates by reason of difficulty; the competition on the outward business and the difficulties under which they operated having reference to the regulations of the Brazilian Government combined

with the fact that coffee could not be carried except at 4785
ruinously low rates had to do with the difficulty of making it pay.

Q. Is the company one and the coastwise service not cared for by a subordinate company; is it all one company? A. It is all one company.

Q. Do you know much about that coastwise service? A. In a general way.

Q. Do you know whether that was a profitable service or not? A. It was not; it never has been.

Q. I suppose the laws of Brazil are like those of the 4786
United States and exclude foreigners from the coastwise service? A. Yes.

Q. And to that extent the Brazilian Company has a considerable advantage; there is no outside competition? A. I would not say it had an advantage. Brazilian companies, of course, have an entire monopoly of the coastwise service. No foreign vessel is allowed to do any coastwise trading, exactly as in the United States.

Q. Do you happen to remember whether there was an investigation by the Brazilian Government of the coastwise 4787
service? A. I have read it in the news sheets of Brazil.

Q. Didn't it take place while you were down there in the consular service? A. Of that I have no recollection, of such an investigation at that time; there may have been and it escaped my memory.

Q. Did it result in the reduction of rates?

MR. BALDWIN: Objected to as immaterial and incompetent and not the best evidence.

A. I could not answer that. 4788

Q. I think you stated the other day the rates you gave for 1910 were much lower now? A. That was based on information which I got from an authentic publication in Brazil just a few days ago.

Q. Wasn't that due to the investigation? A. I should say that investigation, the one I have reference to, took place since I left there.

Q. What was this paper that you speak of as authentic? A. The Journal of Commerce in English.

Q. What is the official paper in Rio? A. The Government publication is the Diario Official.

Q. What is that? A. Published by the Government in

1197

4789 the same way as the Congressional Record in this country.

Q. Is it regarded as official there? A. It is official.

Q. And its reports of proceedings of the Executive and Legislative Department of the Government are authentic?

MR. BALDWIN: I object; he has not shown himself qualified to express any opinion on that subject.

A. It purports to be so. That is all I can say.

Q. Generally speaking, what was that Governmental in-
4790 vestigation?

MR. BALDWIN: Objected to as immaterial, irrelevant and incompetent and not the best evidence.

A. I could not state that.

Q. Did it affect the question of rates?

MR. BALDWIN: I object to that; and also, Mr. Burlingham, this is not pertinent to any questions asked by me on direct.

MR. BURLINGHAM: You argued several times he is
4791 my own witness when I get out of your line.

MR. BALDWIN: That being true you have to adhere to the rule that when you have had your cross-examination you have had it except in so far as to ask further questions that may be necessary from something I have asked on the re-direct, and I have asked no question like that.

Q. (Question read.) Did it affect the question of rates; did it concern the question of rates? A. The part that I
4792 read of this matter had particular reference to it.

MR. BALDWIN: I object upon the ground that he does not know anything about it of his own knowledge.

A. (Continuing.) It had particular reference to the fairness of rates. As a matter of fact the rates which had previously been in force were fixed under the supervision of the Brazilian Government.

Q. Then why should they examine into their own rates?

MR. BALDWIN: If you are going to insist upon that

kind of questions I think we had better suspend and 4793
get a ruling upon it.

MR. BURLINGHAM: That is a very proper question.

MR. BALDWIN: No, it is not. Why they did it, how can he testify as to the state of mind of the officials of the Brazilian Government?

MR. BURLINGHAM: I understand he was down there at the time.

THE WITNESS: I beg your pardon, that investigation I am referring to has occurred only recently and all I know about it is what I read in the papers. 4794

Q. Wasn't there an investigation while you were there? A. I don't know anything about it at all. If there was, it is so long ago it has escaped my memory.

Q. To what do you attribute the fall in the coastwise rates?

MR. BALDWIN: I object.

A. I am not competent to answer that question.

Q. Have you any information as to what the rates are 4795
now? A. No, sir.

Q. What was the date of these rates that you gave on the sugar, cotton and coffee, meat, lumber and cereals? A. They were put in force in 1910.

Q. What part of the year, do you know? A. I could not say.

Q. When did you receive them? A. I could not really say that. It was a rough memorandum that someone in my office had and I took it from them.

Q. I would like to show you a statement of rates 4796
of freight by your line from Rio to five ports, Paranagua, Santos, Bahia, Maceio and Pernambuco, on codfish, flour, rosin, turpentine, oil in barrels, barb wire, hosiery, dry goods and machinery, and ask you whether the rates given for those commodities from Rio to the several ports are substantially correct? A. I have absolutely no means of knowing whether they are correct or not, where they are taken from or anything about them.

List referred to by Mr. Burlingham, marked Defendants' Exhibit 8 for identification.

Q. You spoke of the possibility of your making a profit

4797 for your line if you could get the entire shipments of coffee from Brazil to New York. Now, are you familiar with the cost of running steamers? A. No, I don't know anything about it.

Q. Do you know how much it costs to operate a steamer per day? A. I can find out; it depends on what kind of steamer it is.

Q. You have a list of steamers here that you have had, take any one of them at random, take the *Craigvar;* do you know what the wages list is? A. It does not concern
4798 us at all.

Q. Take the *Tocantins* then, what is the crew list there? A. I know what it is.

Q. What is it per month? A. In American money at the present time it amounts to approximately $2,000 a month.

Q. Do you know what the feeding bill, grub bill is? A. I could tell from my records; I could not tell offhand.

Q. I suppose you know the cost of coal? A. Yes.

Q. Do you know the port charges here? A. Yes.

Q. Do you know the port charges in Brazil? A. I do not,
4799 only approximately.

Q. Do you know the cost of insurance? A. I do. I do all the insurance myself.

Q. Can you state what the cost of insurance per month is on that steamer? A. I can.

Q. What is it? A. It is approximately $7,000 a year.

Q. Do you know the cost of administration of office, overhead charges and so forth? A. Approximately.

Q. And have you taken all of those elements into consideration in coming to the conclusion that if you could get some coffee you could turn the losses of the Lloyd
4800 Brazileiro into gains? A. If you will remember, Mr. Burlingham, in my testimony I said that I felt that I had convinced my company that it could be done to their satisfaction. Now, further than that I do not care to say. I do not care to commit myself.

Q. (Question read.) A. I took all of those elements into consideration in putting the situation before the Lloyd Brazileiro.

Q. And you made certain recommendations to them? A. Yes.

Q. Which they have not adopted? A. They are continuing their service to New York in the hope of being able to carry coffee and continue it profitably.

Q. There is nothing to prevent your getting coffee, is there, up there? A. We do not get it; that is all I know. 4801

Q. These chartered steamers of yours, did I understand you to say they were ten knot boats? A. Some of them are. Most of them we have under charter at the present time are ten knot boats.

Q. Does that mean they make ten knots? A. Under favorable weather conditions they make ten knots.

Q. Do your boats make as good time, for instance, as the Prince Line—I am talking about the chartered boats? A. I have not followed the schedule of the Prince Line boats, but that is my understanding. 4802

Q. Do they make as good as the Hamburg boats? A. I think the Hamburg-American have two motor ships at the present time; they make somewhat better time than any of the boats of the Prince Line or ours.

Q. And the Lamport & Holt—I am not speaking of the mail boats? A. The Lamport & Holt as far as speed is concerned are exactly on a par with each other, passenger and freight.

Q. They are better than the others? A. I think the few Lamport & Holt boats which traded from New York to Brazil had been passenger boats. 4803

MR. SPOONER: That is of the Lamport & Holt?

THE WITNESS: Lamport & Holt.

Q. You have good facilities you say down in Brazil for loading and discharging? A. We have the same facilities that everyone else has.

Q. I looked over this list which you were kind enough to let me see last night and I notice, for instance, that the steamer called the *Craigvar* had been in your service during the greater part of 1912, I should think a good part of it; what sort of steamer is she; do you remember the tonnage? A. She is an ordinary cargo steamer. 4804

Q. A tramp? A. You can call her a tramp. She is a tramp when she is not trading under a line. She is at the present time chartered by one of the other regular lines running to South America, I believe it is the Houston. I can tell you what her dead weight capacity is approximately. Her dead weight capacity is about 7,000 tons; her gross tonnage is 4,415.

Q. And her net? A. 2,874.

4805 Q. And her dead weight? A. Her dead weight is something over 7,000 tons.

Q. Is she a ten knot boat? A. Yes, so represented by the owners.

Q. But you have had her running since January, I believe? A. We had her for two trips in 1911 and 1912.

Q. And you can tell, I suppose from your experience with her whether she makes ten knots? A. My recollection is that her actual steaming record showed about between 9½ and 10 knots under favorable conditions.

4806 Q. How long is the voyage from port to port, from New York out and back of those boats like the *Craigvar?*

MR. BALDWIN: You mean the actual running time or the time she is down there?

Q. I said from this port to this port; out and back to this port? A. About three months or a little more, depending on the length of the stay in Brazil.

Q. The Arbuckles' coffee is stored up out there, is it? A. Yes.

4807 Q. So that it is usually ready when you get there? A. It is usually ready when we get there.

Q. You do not have the same delay you have with other people's cargo I suppose?

MR. BALDWIN: He did not get any other cargo except in one instance.

A. From my experience I could not say as to that.

Q. I observe that this steamer *Craigvar* arrived in New York according to your statement on the 14th of January,

4808 1912, with 86,240 bags of coffee, and she arrived again May 11th, 1912, which is four months less three days, with 57,310 bags of coffee, and she arrived again on September 5th, 1912, which is four months less—— A. Are you sure that is the *Craigvar?*

Q. It looks so to me—September 5th, 1912, with no coffee—just four months less six days with no coffee; won't you explain to me why it took her so long to make those trips? A. In that latter case my recollection is that she came up here not consigned to us; we rechartered her at Santos to the Munson Line who sent here to the River Plate for cargo.

Q. Take the first one from January 14th to May 11th, and 4809
she had coffee on both trips; if the coffee was ready down there why did it take so long? A. It probably took a month to discharge her cargo in Rio. She had nearly full cargo for Rio.

Q. Can you do better with your own boats, the *Tocantins* for instance? A. No, sir; I think it all depends on conditions.

Q. I observe that it arrived here February 25th, 1912, with no coffee, and she did not arrive again until June 25th, four months to a day, and she had no coffee then; why did 4810
it take her four months if she had nothing to bring up? A. I could not say.

Q. You might look that up and perhaps you can explain it if you have to come back again; if not, don't take the trouble? A. I really could not say. We do not concern ourselves with the boats; after they are in Brazil they are in the hands of the principals then.

Q. The other day you said that you thought a boat coming up in ballast will come here in, I think, twenty-one days, and could load in three days if I remember rightly, could 4811
come here in twenty-one days with coffee and load the coffee in three days, and in looking over these figures here it seemed to me that a great deal longer time was spent and, therefore, I asked you to explain it if you can? A. Undoubtedly boats—in the first place, the *Craigvar* on the first voyage had 86,000, nearly 90,000 bags, of coffee, and she may have been ten to twelve days loading that. She probably was, possibly more.

Q. Do you know about the length of time it takes to load coffee out in Brazil? A. No, only in a general way. The 4812
conditions vary so much it is impossible to lay down any general rule.

Q. Cannot you say generally that in Brazil there is likely to be a good deal of delay? A. There certainly is.

Q. And also in discharging? A. Yes.

Q. You have to reckon on that in your business? A. (No answer.)

Q. What is the price of coal out in Brazil? A. In Rio de Janeiro at the present time I think it is something like 30 to 35 milreis, about 40 shillings per ton.

Q. That is about $10, between $9 and $10? A. Yes, it is at least that.

4813 Q. So, of course, it is advantageous to you, unless freights are very high, to take a good deal of coal down with you? A. Yes.

Q. Even though that coal displaces so much cargo? A. We always load our steamers with sufficient coal to bring them at least as far back as the West Indies.

Q. Haven't you made a statement somewhere in the course of your testimony as to the freight earnings per ton? A. That is in evidence.

Q. Is that a statement, or is it in your testimony? A. It
4814 is in evidence; a statement in evidence.

Q. In this Petitioner's Exhibit 236 you give the gross freight on cargoes carried from New York to Brazil by the Lloyd Brazileiro for six years from 1907 to 1912, and also the tons of cargo carried; now, in 1911 it appears that you carried 163,334 tons, and that the gross freight you collected was $926,629.71, and that there was no vacant space. As I worked that out the freight per ton was $5.66, is that right? A. I don't know.

Q. Do it for me; multiply the tons by 5.66, 5⅔ will do? A. That is approximately correct.

4815 Q. Now, if you buy your coal here for $3.50 a ton, or something like that, isn't that what you pay? A. $3.25 now.

Q. $3.25 say in 1911, and the freight that you could earn on a general cargo at $5.66, isn't it fair to add that $5.66 to the original cost of the coal in order to determine its value, its cost to you?

MR. BALDWIN: Of the carrying?

Q. Because you crowd out $5.66 worth of cargo to every
4816 ton of coal you put in the cargo space?

MR. BALDWIN: I submit there is no evidence he crowded out anything; on the contrary, he says they have never crowded out. Your question involves an assumption that is not borne out by the evidence, and I object to it as incompetent and immaterial and unfair.

A. I must confess to a great deal of inexperience, but I must also confess that I do not do my steamship accounting that way.

Q. That does not answer my question? A. That is the

only way I can answer it. In other words, I do not regard 4817
that as the proper thing to do. That is not regarded as an item in the cost of operating a ship, the carrying of that coal.

Q. At any rate, if the ship goes out full of cargo, or all of her cargo space is full, and coal is taking the space of freight, that is a cargo, and it ought to be considered certainly in determining the cost of the coal to the company, isn't that so?

MR. BALDWIN: I object upon the ground that there is no evidence any was crowded out. 4818

A. So far as 1911 is concerned I am absolutely incompetent to state whether any cargo was crowded out for the purpose of carrying coal or not.

Q. Then we will take 1912? A. And as far as 1912 is concerned I can state that no cargo was shut out, or did we refuse to carry cargo, because we had to have the space for coal.

Q. According to this Exhibit 236 it appears that in 1912 you carried 178,366 tons of cargo with no vacant space, 4819
and the gross freight received for the carriage of that cargo was $1,237,257.50, which makes an average per ton of cargo of $6.93; if my calculation be correct, assuming that it is correct, and I base it entirely on the figures which you furnished yourself, and assuming that you carried coal from New York which took cargo space down, I ask you whether that $6.93 should not be added to the original cost of the coal in order to determine what the coal cost the Lloyd Brazileiro?

MR. BALDWIN: I object on the ground that the ex- 4820
hibit the counsel refers to does not show that any cargo was superseded or crowded out to give place for coal, therefore, that your question assumes a fact that is not in the evidence.

MR. BURLINGHAM: I answer that it appears there was no vacant space in the ship.

MR. BALDWIN: That might be; that don't cover it.

A. In the first place, if you want me to answer that question, when the statement is made that a ship has no vacant space while that is stated advisedly it does not mean that

4821 there was absolutely no space, because it is impossible to load a ship so that there will be absolutely no space. It is full to the extent that we do not care to book any more cargo.

Q. Is that all you can answer that question? A. I would say that I do not think it is fair to add the average freight rate per ton to the cost of coal in New York to ascertain the correct cost of the coal in Brazil.

Q. But it is true that if you occupied cargo space with coal you lost in the year 1912 $6.93 for every ton? A. But
4822 it is not true that we lost cargo in order to carry coal.

Q. Then the statement cannot be correct as to vacant space. That is all.

RE-CROSS EXAMINATION by Mr. Kirlin:

Q. Now, Mr. Slechta, we have a lot of talk here about hearsay and I suppose your testimony about losses sustained on the coastwise service in Brazil is the same kind of hearsay as the testimony about the $2,000,000 lost to the company, isn't it? A. I think I said yesterday that
4823 that statement was made on the strength of published statements of the financial condition of the Lloyd Brazileiro which I have seen.

Q. Much of your testimony is based upon knowledge that you acquired in the course of your relations with the company and your position down there in Brazil; it is not strictly personal knowledge? A. No, sir, that is true.

Q. And, Mr. Baldwin to the contrary perhaps, not strictly hearsay. You spoke of having taken a contract for approximately 10,000 tons of material at 15½c a cubic foot which you said was a cent less than what you
4824 understood the quotation of the conference lines had been on it. That difference of a cent on what you estimated to be the cubic foot quantity of that contract amounted to about $3,600. Now, what evidence did you have before you as to whether or not the 14½c rate that you assumed was the quotation that the conference had given on that was actually the quotation they had given? A. Well, my information about that was obtained in exactly the same way that we always obtained information as to the rates quoted by the other lines.

Q. That is, what the customer told you? A. Partly that and partly from what my freight broker ascertains on the Exchange.

Q. But so far as you were concerned it was report merely? A. It was a report which I regarded as authentic at the time. 4825

Q. Yes, but still—— A. One that I could not vouch for at the time.

Q. Now, Mr. Baldwin asked you some questions yesterday, the drift of which seems to be, and it is largely Mr. Baldwin's own drift, although assented to by you, that in making contracts on time shipments you did not require your shipper to ship all his shipments by your line. Now, those two contracts that you produced did contain in them, as I recall them—they do not seem to be here this morning—a statement that all the shipments were to go by your line. 4826

MR. BALDWIN: No, not those two.

MR. BURLINGHAM: One of them did.

MR. KIRLIN: I am sure one of them did.

Q. You did not mean, Mr. Slechta, to say that you made time contracts or contracts similar to those except on the basis of the shipper giving you all the shipments that he made, or the routing which he controlled, did you? 4827

MR. BALDWIN: Are you speaking about that one?

MR. KIRLIN: No, I am speaking about the general drift.

A. As to the policy which this agency of the Lloyd Brazileiro has followed, before I took charge of it I cannot state with exactitude to exactly what the policy was, but so far as my own connection with the company has been concerned, or is concerned, it has been my policy to ascertain as accurately as possible exactly what the shipper has to ship and to make contracts on the basis of quantity rather than time; but there are shippers who do not know and cannot make such contracts and with such the natural way to make a contract is for them to declare that all shipments which they have to make they will make over our line. That is the only way in which we can ascertain even approximately what cargo they had to ship, what cargo we could depend upon. 4828

Q. I am not questioning at all the reasonableness of that attitude; on the contrary, I concur in it individually, but

4829 the point that I want to learn is whether in answer to these questions of Mr. Baldwin put to you you meant to intimate the contrary, but I take it that you did not from what you now state? A. No, sir.

Q. In the latter of the two classes of cases that you just referred to your practice is in making the contract to have it stated that shipments of that particular shipper are all going under that contract by your line? A. Yes, sir.

Q. And in reference to the former class in which you ascertain, or try to ascertain the quantity that the shipper
4830 is going to be able to ship, your contract covers that entire quantity? A. Exactly.

Q. Now, you produced a number of contracts to Mr. Baldwin which have been marked for identification, and some of those I think are with people with whom conference contracts have been put in evidence—I would like to see those again—is this a contract that you made with the Vacuum Oil Company last year? A. The contract was not made by me personally, but I was responsible for it.

Q. I mean this is a contract with the line? A. Yes, a
4831 copy of it.

MR. KIRLIN: I offer that contract in evidence.
Marked Defendants' Exhibit 9.

Q. You have also produced from your files, have you not, the contract between your company and the Singer Sewing Machine Company, dated the 11th of January, 1909? A. Yes, sir.

Q. Is that it? (Showing witness paper.) A. It is taken from our files and signed by the John T. Seager Trading
4832 Company, who were at that time agents for the Lloyd Brazileiro.

Q. That contract provided shippers agree to forward their entire shipments of sewing machines and parts consigned to ports of Brazil as below stated for the period of one year from January 1st, 1909, to December 31st, 1909, for the steamers of the above mentioned line at freight rates as under noted, did it not? A. Those are the provisions of the contract, yes.

MR. KIRLIN: I offer that in evidence.
Marked Defendants' Exhibit 10.

Q. Is this the contract with the Vacuum Oil Company 4833
for 1913? A. Yes, sir. (After examination.)

Q. Does that provide for a shipment by your line of all their shipments for that year? A. Yes, sir.

MR. KIRLIN: I offer that in evidence.
Marked Defendants' Exhibit 11.

Q. Have you produced a copy of your contract with the Union Carbide Sales Company for 1913? A. Yes, sir.

Q. Is that it? A. That is it. (After examining paper.)

Q. This is unsigned, but I take it it is a copy? A. That 4834
is a correct copy, yes; I verified it.

Q. That also is an exclusive contract?

MR. BALDWIN: I object to the question "Exclusive contract"; it speaks for itself whether it is or not. It may strike you as exclusive and it may not strike us the same way.

A. The obligation was simply they agreed to give us all their shipments and we agreed to provide tonnage for them. 4835

MR. KIRLIN: I offer that in evidence.
Marked Defendants' Exhibit 12.

Q. Was this a copy of a contract that you had with Thompson & Company covering certain months in 1911? (Showing witness paper.) A. Yes, that is the copy that was made in my office, and which I supplied to the Government.

Q. Is that a form of the first class contracts you referred to in which you ascertain quantities that the shipper would 4836
have to ship and then contracted for the specific quantity? A. These contracts are usually made in this way; the shipper comes to us and asks us for a rate on an approximate quantity per month, in this case 10,000 to 15,000 cases of kerosene during the months of January, February and March.

Q. Is that an instance of the first class contracts you referred to a moment ago? A. Yes, sir.

MR. KIRLIN: I offer that in evidence.
Marked Defendant's Exhibit 13.

4837 Q. Is this a copy of your contract with Hasenclever & Company for agricultural implements for the year 1911?

MR. BALDWIN: On that ground you have already put in here without objection from me contracts purporting to be with people that the conference lines have at some period of time had, and I do not see that this is at all material.

MR. KIRLIN: Your direct examination of the witness was on this subject.

4838 A. That is what it is.

MR. KIRLIN: I offer it in evidence.
Marked Defendants' Exhibit 14.

Q. Have you produced a contract with the Swan & Finch Company for the year 1911 for oil? A. This is a contract with Caldwell & Company, who are brokers for them.

Q. Who are the Swan & Finch Company? A. I don't know anything about them.

4839 Q. Who signed it or accepted it? A. It is signed by the freight agent for the Standard Oil Company. It is evidently a branch of the Standard Oil or was at that time, and by our freight broker.

MR. KIRLIN: I offer that one also.
Marked Defendants' Exhibit 15.

Q. Did you also produce a copy of your contract with the American Smelting & Refining Company? A. I produced such a contract.

4840 Q. For all of their pig lead shipments March 15th to December 31, 1911? A. That is a correct copy.

MR. KIRLIN: I offer that in evidence.
Marked Defendants' Exhibit 16.

Q. Is Bourne & Scrymser Company a shipper of lubricating oil an independent company, or is that a Standard Oil subsidiary; this relates to 1912? A. I could not say about their relationship to the Standard Oil. All of our freight is booked directly with them as an independent firm.

Q. Are they large shippers? A. Fairly so, among the 4841
largest of the shippers of lubricating oil.

MR. KIRLIN: I offer that in evidence.
Marked Defendants' Exhibit 17.

Q. Is the Standard Sanitary Manufacturing Company a large shipper? A. They are large shippers; they do not ship very large quantities to Brazil.

Q. Are Caldwell & Company their agents? A. Yes.

Q. They ship—— A. Sanitary appliances.

Q. Sanitary plumbing supplies? A. Yes, bathroom sup- 4842
plies.

Q. Is this a copy of their contract for 1912 with your line? A. It is.

MR. KIRLIN: I offer that in evidence.
Marked Defendants' Exhibit 18.

Q. Is the Ansonia Clock Company a large shipper to Brazil? A. Yes, sir.

Q. Did you produce a copy of your contract with them
covering the period of 1911? A. That is taken from our 4843
files; a copy of the contract in our files.

Q. And an executed contract? A. Yes, sir.

MR. KIRLIN: I offer that contract in evidence.
Marked Defendants' Exhibit 19.

Q. Is the White Sewing Machine Company a large shipper to Brazil? A. They are not large shippers, no, sir.

Q. They are shipping sewing machines? A. They ship occasionally small shipments.

Q. Are they competitors of the Singer? A. I could not 4844
say whether they regard themselves or not; they are not very active competitors if they are.

Q. Is this a copy of your contract with the White Company from April, 1911, to April, 1912? A. This a copy of the contract in our files, yes, and I presume it is correct.

MR. KIRLIN: I offer that in evidence.
Marked Defendants' Exhibit 20.

Q. You had a contract with the American Smelting & Refining Company for—— A. You already have one.

4845 Q. This document is just a continuation of that for the next year, isn't it? A. Yes, sir.

Q. That is also produced from your files? A. Yes, sir.

MR. KIRLIN: This is the same general terms as the other one, and I will not offer it in evidence.

Q. Now, Mr. Slechta, is it a fact that there was a very marked rise in the freight market in 1911 and 1912 over the rates in 1909 and 1910? A. There were, yes.

Q. You found evidence of that in the very much in-
4846 creased prices that you had to pay for chartered vessels, did you? A. I could not say that there was an evidence of increased rates paid for freight.

Q. I mean charter rates; it was an increase in the charter rates? A. The increase in the charter rates was due to the fact that the supply of available charter vessels was not equal to the normal demand.

Q. There was a very heavy increase? A. Yes, sir.

Q. And there was also a large increase, though not as large an increase, in your freight rates for the same rel-
4847 ative period, was there not? A. Yes.

Q. About the translation of the oil rates to the coffee rate, did you have a chance to look at that since yesterday? A. I neglected to look that up. I left the office immediately after leaving here yesterday.

Q. I think you said, Mr. Slechta, that the stability of freight rates was a desirable thing in this trade? A. I said that. I qualify it by saying that the shippers themselves are usually the ones that are interested in getting reductions made in the rates.

Q. And isn't it a fact that the stability of rates has been
4848 in a measure promoted by the fact that the three lines that are trading to Brazil in addition to yourselves from this port through the medium of conference preserves stability of their own rates?

MR. BALDWIN: I object to that as incompetent and immaterial, asking this man's expression of opinion upon the operation or action of others. He is not a judge of that.

A. The rates have certainly been approximately stable and we have been very glad that they were so.

MR. BALDWIN: From the owners' standpoint? 4849
THE WITNESS: Yes, sir.

Q. The shippers are also glad that they are stable, aren't they, according to your experience? A. My experience has been that the shippers generally like to get just as low a rate as they can regardless of what they paid the last time they shipped.

Q. You say they want to get in advance what their rates are going to be and to that end make time contracts? A. Yes, that is true. 4850

Q. Very largely? A. And at the same time when they make a contract they want to be sure they get a rate that will be the lowest rate throughout the period for which they contract and, as a matter of fact, we do make contracts in which we agree that if we give a lower rate to anybody the contractor gets the benefit of the reduction.

Q. They want to be assured that their competitors are not going to get better rates than theirs? A. Yes.

Q. Now, that is a recognition, is it not, of the fact that stability is a desirable thing from their standpoint?

MR. BALDWIN: I object to that as argumentative. It is not competent to testify to the state of mind of shippers. 4851

A. I really think my answers have already covered that. I do not know just exactly how to answer your question. As I said before, there are shippers, for instance, who have more or less of a monopoly of the American business to Brazil in certain lines. Their competition being principally with Europe, and they also have their own houses, or their direct representatives in Brazilian ports, and for 4852 such exporters it is a very important consideration to know that their representative can have a fixed and definite rate which he can use in quoting prices. For that reason those shippers usually wish to make a time contract covering the period of a year or other period. Others, commission houses for instance, are constantly in competition with each other here and, of course, each man seeks to get the best rate that he can, the best freight rate, because if he can get a little better freight rate than the other fellow he can get the business and the other fellow can't.

Q. Have you had any experience of the effect of unre-

4853 stricted competition in freight rates between all the lines engaged in the service? A. Personally I have not.

Q. What would be the effect in your judgment on the freight market if the conference should cease to maintain uniform rates amongst themselves and should be started into unrestricted competition with themselves and with you?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent. What his opinion may be of the effect has nothing to do with this case. One
4854 person can judge about that just as well as another, I fancy.

A. Unrestricted competition on the part of the conference lines would be disadvantageous to us as a steamship company from some points of view. At the same time unless they increase their sailings we could still get pretty much our own rates because the cargo has to go and the equivalent space that they already have—the space equivalent to what they now have—we could still carry the surplus at
4855 practically our own rates.

Q. You could not get your own rates if they were offering lower rates, could you? A. We could if they did not offer sufficient tonnage to take care of the whole business.

Q. And if they offer sufficient tonnage, of course, your rates would fall to an unremunerative basis? A. We should have to cut our rates or not get any freight, of course.

Q. In other words, any line, any single line, that furnished adequate tonnage to supply the needs of the trade could immediately put the rates down to an unremuner-
4856 ative basis?

MR. BALDWIN: This is pursuant to the same objection.

Q. On the same basis?

MR. MONTGOMERY: Do you mean put everybody's rates down from conference?

MR. KIRLIN: Put conference down.

Q. They would get all the business, wouldn't they? A. And did the business in a satisfactory manner.

Q. And in that contingency a question of whether more

than one line would continue in the service would simply 4857
be a question of whether the other lines, or whether that line, had enough money to keep up the fight until it got all the business, wouldn't it?

MR. BALDWIN: Same objection.

A. The steamship business, the world over, I think is very clearly established along those lines. If there is unrestricted competition for a period there is certain to be some sort of an arrangement, tacit or otherwise whereby competition ceases, or all but one line go out of business. 4858

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Well, Mr. Slechta, the questions propounded to you as I understand them, and as you answered them, is based upon the theory that if there was no conference there would be an indiscriminate scramble for freight and, therefore, and necessarily, a great cutting of rates? A. Yes.

Q. Now, I understood you to say that, however, if the conference lines that are now in the conference, did not increase their sailings and in view of the increased business 4859
there has been to the South American ports in recent years, the rates would conform themselves according to the demands for tonnage to carry it, wouldn't it? A. Absolutely.

Q. So it would be like the effect of competition in any trade, wouldn't it, where there is sufficient trade that the demand in a sense fixed the price, isn't that right? That is true of all trades, isn't it? A. Yes, I think that can be stated as a general truth.

Q. As far as you know you have ascertained, haven't you, that generally business is still being carried on although 4860
that whole world is practically more or less in competition; it still goes on, doesn't it, as far as you have been able to see? A. Yes.

Q. Now, assuming that business here, that is to say, offered for the South American trade, particularly Brazil, should remain in any sense proportionate as it obtained for the last two years and the conference lines and your line did not increase the tonnage it would not necessarily work chaos or havoc with business, would it, would it if there was sufficient business to divide around? A. My own opinion is there would be readjustment whereby losses that

4861 would be obtained by that kind of competition would be absorbed to a certain extent at least. In the first place, the fact that there is a smaller volume of cargo from Brazil or, at least that there is a superficial tonnage from Brazil, for cargo offering, while there is a superficial tonnage for the cargo offering from New York to Brazil, has undoubtedly a very important bearing on the question. The fact that rates had gotten down below a remunerative basis on cargo from New York to Brazil might possibly cause some companies, one or more, to transfer certain of their vessels to
4862 such a service as would make them pay better, possibly using one—the route in one direction and taking that off in the other direction.

Q. Generally speaking any opinion offered as to the final effect of free competition in any given field such as this Brazilian trade would depend upon so many different questions it is almost incapable of being answered, isn't that so? A. It is certainly a very complex problem.

Q. Now, among the results that would fall from the fact that these lines were no longer in conference would be that
4863 you would be able to get return cargoes from Brazil, wouldn't it? A. I think that would be speculative pretty largely.

Q. They have asked you to speculate; I am asking you to speculate? A. I am perfectly willing to speculate.

Q. You go right ahead; we have had a lot of it this morning and we will have a little more. (Question read.) "Now, among the results that would fall from the fact that these lines were no longer in conference would be that you would be able to get return cargoes from Brazil, wouldn't it?" A. Mr. Daniels probably knows more about that than
4864 I do, but I should say possibly were it true that the rates reached so low a level that it was considerably less remunerative than now for the Lamport & Holt Company to ship cargo from New York to Brazil that probably they would put some—reduce their service to a minimum and retain their vessels on the service on which they have maintained them up to recent weeks, that is, on the service from New York to England and from England to Brazil and then outward so that they would continue to take advantage of the coffee business from Brazil to New York, and let the New York business go as far as shipments outward to Brazil are concerned.

Q. I don't think you quite understood my question, which 4865
was what would be the effect upon your business in getting return cargo from Brazil if this conference was broken up? A. That is what I tried to say, that the result would be that there would be quite as much tonnage offered from Brazil and that we would have no better opportunity to get coffee than we have now.

Q. If the conference is broken up the rebates would be broken up too, wouldn't they? A. In the way your question was first put I took the reference to be entirely to the New York business? 4866

Q. No, this conference has more than one aspect, it has an aspect that applies to the business inward as well as outward? A. As long as I understand that is what you mean all right, all right.

Q. I mean if these lines were engaged in free competition? A. Both ways.

Q. Both ways, then what effect would that have on your ability to get return cargo? A. Then we could be on an absolutely free basis for coffee.

Q. And then you could get it, couldn't you? A. Yes, we 4867
would get it.

Q. Now, Mr. Slechta, Mr. Kirlin asked you about the desirability of stable rates, and as I recollect his question related more, as to the desirability upon the part of those who have contracts. Well, now, even assuming that the stability of rates might be attractive to those who have contracts, stability of rates would have no attraction whatsoever for the casual shipper, would it? A. Not for a casual shipper, certainly.

Q. He is interested in getting the very lowest rate he 4868
possibly can? A. Yes.

Q. Now then, these commission merchants, for instance, who collect freight from all parts of the country, they collect as a rule for the actual shipper, don't they? A. Most of them have their regular customers in Brazil.

Q. But they are casual shippers——

MR. BURLINGHAM: What do you mean by casual shippers?

MR. BALDWIN: Those who do not ship upon either fixed times or fixed amounts.

A. I thought by casual shippers you meant small ship-

4869 pers. That is not true of commission houses; they ship mostly for large shippers.

Q. But then there are a great many shippers who do not—in the requirements of their business they do not get either time contracts or time contracts for a given amount within a time, is that right? A. Yes.

MR. BURLINGHAM: Do you mean by a casual shipper one who does not make a contract?

MR. BALDWIN: I mean a time contract, that is what I said; I think that is right, casual shipper.

4870

Q. In the sense that I use casual shipper it is not to their interest to have stable rates that are fixed over a period of time, is it? A. It has been my experience that shippers make no question of having stable rates, they want us to give them the best rate we can on any shipment.

Q. Then as a matter of fact your experience is the shipper is more interested in getting as low a rate as possible? A. That is what I said.

Q. Now, Mr. Kirlin asked you whether or not if there
4871 had not been an increase in charter rates within the last two or three years I recollect, and he also asked you, and you answered, there was also an increase in freight rates. Now, in making these contracts, time contracts, or contracts for a given amount to be shipped within the period of time, those rates were not fixed upon the then present rates of the charter market, were they? A. They were not fixed upon that, but we naturally insist—it has been our policy since I have been here, because charter rates have been so high, to raise the rates to as great a parity as possible.

4872 Q. But haven't you already testified that what you called the tramp or charter rates are more or less variable? A. Yes, sir.

Q. You do not fluctuate them up and down to meet that, do you? A. No, sir.

Q. Now, with reference to these contracts with various people that Mr. Kirlin has put in here, the rates in Exhibits 9 to 20 inclusive, which have among other provisions that they should ship all of their shipments during say the period of time mentioned therein. In fixing those rates you had no agreement or conference with any other line, did you, that you should quote those rates? A. No, sir.

Q. That was your individual act? A. Yes, sir. 4873

Q. And you attended no conference of any other carriers or had any relations with them in any way in which even those rates were discussed? A. I speak only from my own experience; as far as I am concerned I never had any or my office never had any such.

Q. While it is part of your policy to grant concessions from your regular rates to those who make the time contracts or for given amount, that probably is not the result of any conference between you and any conference lines? A. No, sir. 4874

Q. It is just a plain business proposition? A. Yes, sir.

Q. And when you fix those rates you do not have in mind the fact that some other person or some other line trading in the same territory has an agreement of any kind with them or with you by which they can send a shipment over other lines? A. No, we have no such arrangement or scheme.

Q. In other words, it is just simply an individual act upon your part? A. Entirely so, a contract affecting nobody but the shipper and ourselves. 4875

Q. Now, when in answer to my interrogatory, which is page 2027 of the record—what did you mean when I put this question: "But you don't follow them to the extent of compelling every person or shipper who makes a contract to confine all shipments to your line." Did you understand that question to mean that you would only grant the rates providing that they continually confined all their shipments to the line, or just simply for the contract period? A. The question has never come up and we have never attempted to get any sort of satisfaction out of contractors who ceased to ship by us or have occasionally made 4876 shipments, except under exceptional circumstances such as this: If we have given a shipper a rate on his business and he uses that rate to get his business and then takes advantage of a chance opportunity to make money for himself by getting a lower rate we do object.

Q. I was asking you the question to clear up part of your testimony. The question was put to you: "But you do not follow them to the extent of compelling every person or shipper who makes a contract to confine all his shipments to your line? A. No, sir." That is plain enough to me, but it may not be to you. All shipments, I

4877 mean not for a period of time, but for all shipments for all time, you do not give them a concession in the rates on that kind of understanding, do you? A. No, sir.

Q. In other words, you make other contracts, do you not, with shippers where there is no provision that they shall confine their shipments for the same period of time to your line? A. Yes, most of our contracts are made that way. Usually when contracts are made for the whole of the firm's business it has been more at the solicitation of the shipper than on our own part.

4878 Q. And the fixing of whatever rate that is granted is your own individual act, I mean your own company? A. Yes, sir.

Q. I show you here what purports to be confirmations of contracts, or contracts with Thompson & Company of August 23rd, 1911, Amsinck & Company, February 25, 1911, with the same company October 24th, 1910, and South American Shipping Company under date of July 23rd, 1911; are those contracts with the parties I have just named where they are not required to—where it is not for their entire direct or other shipments for a period of time?

4879 A. These are all copies of contracts taken from our files for quantity shipments, or shipments of specified quantities.

MR. BALDWIN: I offer those as an illustration of that class of contracts.

Marked Petitioner's Exhibits 240, 241, 242 and 243.

Q. Now, Mr. Slechta, is it a fact that these conference lines charter the same class of boats that you do? A. When

4880 they charter at all they do.

Q. Are the delays of the loading or the unloading of your boats, so far as you know in Brazil, any greater than that of the conference lines? A. For similar amounts of cargo there is no difference.

Q. Whatever conditions that would occasion delay in Brazil with reference to your boats would operate the same way against them? A. Yes.

Q. Now, Mr. Burlingham enquired very particularly about one boat that was four months—that came back in ballast? A. She came back without anything as a matter of fact.

Q. I think you said that after the boats are in Brazil 4881
they are in the hands of the principals; what did you mean by that, the owners of the boats? A. Yes.

Q. In other words, your jurisdiction has ceased after it arrived there under your charter? A. No, I mean by that when I say our principals, I mean the Lloyd Brazileiro in Brazil.

Q. And whatever may have occasioned the delay in getting back here you have no knowledge of? A. I have no knowledge of, and they despatch boats there as best they can under the conditions prevailing. 4882

Q. It may be for repairs or for anything? A. Frequently for repairs; that and also the *Tocantins* very probably did a good deal of coastwise business on her way up all the way to Pará, having no cargo to bring to New York, to save as much of the expense of the return voyage as possible by taking coastwise cargo.

Q. You said in answer to another question of Mr. Burlingham, that the fact that you did not get any coffee outward excepting the Arbuckle coffee, I suppose you mean —— A. Yes.

Q. He also asked you why you did not get it. Your an- 4883
swer was to the effect that you did not get it; do you know why did you not get it? A. Because it is generally understood—it is generally understood that it is because the shippers are not in position to avail themselves of our lower rates.

Q. And why, because of the rebates? A. Because of the rebate system.

Q. In other words, those shippers there ship both to Europe and the United States? A. Yes.

Q. And if they availed themselves of your lower rates, 4884
why they would—— A. Lose their right to the deferred rebate to New Orleans and New York; all ports in Europe.

Q. Do you know whether or not that in the event that they patronize you that the conference lines would refuse to take their shipments at all?

MR. KIRLIN: I object to any evidence on that subject except personal knowledge, if the witness has any understanding or general knowledge on this.

Q. Go ahead now, Mr. Slechta? A. I think I testified on direct-examination the first day that in interviewing cer-

4885 tain shippers with a view to obtaining freight from Brazil I was told that they would have such difficulty in getting space if they availed themselves of the opportunity to ship by us.

MR. KIRLIN: We move to strike out the statement of the shippers as not competent.

Q. Now, Mr. Slechta, coming back again to the question of the losses made by this company for one or two questions, you stated to Mr. Burlingham that you did not know what
4886 the overhead charges were and offices with the exception of the wage list and the cost of coal, you did not know the cost of operating the vessel? A. I can only estimate that.

Q. But you did state that you thought or had convinced your principals that if you could get the return cargo from Brazil the business could be carried on at a profit, is that right? A. I said that because naturally they know what the expense of the vessels are at that end, and if I can show them definitely what the operating charges are here and what the income will be from this end they can readily
4887 piece the thing together and see whether they regard it as profitable business.

Q. In other words, they have within their knowledge the cost of doing the business? A. Yes. I sent them my account; they do not send me theirs.

Q. And in view of what did you hear and the cost of operation from here you did persuade them that if you did get return cargo you could carry on the business? A. Yes.

Q. And that is what you meant? A. That is what I meant.

4888 Q. Now, Mr. Slechta, have you produced a compilation of general cargo rates charged by your company from New York to ports in Brazil? A. Yes.

Q. Is this it? (Showing witness paper.) A. Yes.

MR. KIELIN: What is the period.

MR. BALDWIN: From 1909 to 1912 inclusive.

THE WITNESS: Yes, for the years previous to that I have no figures available. The manifests are not in our control.

Q. Was this made up from manifests? A. Yes.

Q. For instance, opposite the name Santos for 1909

there are the figures 22 and a hyphen and 27? A. Yes, 4889
meaning 22 to 27c per cubic foot on general cargo carried from New York to Santos.

Q. In other words, 22 is the minimum and 27 the highest? A. Yes, they varied for different classes of general cargo.

Q. For the year 1909 we will say? A. Yes.

Q. And that illustrates the way it is made up? A. Yes.

Q. Where those figures occur in the double aspect it means ranging between those two figures? A. Yes, maximum and minimum. 4890

Q. You also have the ports set out here and the years? A. Yes.

MR. BALDWIN: I offer it in evidence.

Marked Petitioner's Exhibit 244.

Q. Now, Mr. Slechta, have you made up or had made up the sailings of your boats? A. The arrival.

Q. Yes, the date of arrival and the port from which the cargo was carried? A. Yes.

Q. And the cargo and the freight? A. Yes. 4891

Q. Is that it? (Handing witness paper.) A. Yes.

MR. BALDWIN: I offer that in evidence.

MR. KIRLIN: We object to it as immaterial, irrelevant and incompetent.

Marked Petitioner's Exhibit 245.

RE-CROSS EXAMINATION by Mr. Kirlin.

Q. Mr. Slechta, in answering the questions that Mr. Baldwin asked you with reference to comparative rates charged by your company for freight and charged by ship 4892
owners for charters, you did not mean to state that your freight rates were made entirely without reference to the cost of chartering tonnage to carry the goods on which the freight was earned, did you? A. No, I did not mean to state that; I don't think I did. I meant to state, and what I think I stated and what I can add to that is that it is naturally my policy to get as high a freight rate as possible to make up for the increased rate we have to pay for chartering boats. That is what I said exactly, I think, but it is also true that we must make our rates many times absolutely irrespective of what we paid for the

4893 chartered boats, dependant upon the demand for space and upon the rates that our competitors charge.

Q. Of course, in the last analysis freight rates are made up by consideration of what you can get; that is, what the traffic can afford to pay? A. Yes.

Q. But it is also true, is it not, that where you have to charter tonnage to carry goods you must have some regard to the charter rates in fixing your freight rates, otherwise you could not do the business economically? A. Yes.

Q. And you try to charge in the ordinary course rela-
4894 tively as near the equivalent charter rate as you could and not go beyond the charter rate? A. I would not say that exactly. Perhaps to answer the question by an illustration, tion, assuming that we can make a profit or operate without a loss paying a charter vessel of a certain tonnage $8,000 a month, we certainly could not operate at a profit or without a loss with the same rates and under the same conditions and pay $10,000 a month for the boat, because the difference between that amount in itself would be the difference between freight, the earnings, and no earnings
4895 that are—the difference between those amounts.

Q. So that in the last analysis if the business is to be conducted economically with chartered ships the freight rates must have a very close relation to the cost of charters in the market, must they not? A. Yes, and yet it has been my experience during the past year that we have had to reduce rates and certainly that has happened every time that we were paying an increased rate for the charter boats.

Q. That is because the business would not stand the amount that had to be charged in order to enable you to
4896 pay your charter rates and still conduct your business properly? A. Yes.

MR. BALDWIN: I object to that.

Q. While you do not fix your rates, your freight rates, in conference, yet as a matter of fact you follow approximately the rates which are fixed in conference, do you not.

MR. BALDWIN: You mean in which he is in conference? There has been no conference.

MR. KIRLIN: No.

A. I have no means of knowing what the rates are fixed by the conference except as those rates prevail after they are fixed in conference, or agreed upon, and, naturally, we do not get the business if we charge rates higher than those fixed in conference, so that it means that we must get either down to a parity with them or below them. 4897

Q. And you cannot go much below them and pay your current rate for charters? A. We try not to go any more under them than is absolutely necessary to get the business.

Q. When you express a view, or rather made the flat statement that if there was unrestricted competition all around you would get coffee homeward, that is subject to what you previously said about the effect of competition and your ability to survive it, wouldn't it? A. Yes, that would be an element for consideration, of course. Assuming that we could operate at a profit, or assuming that the company wished to continue the service without operating at a profit, we would have a better chance of getting coffee and probably would get it than otherwise. 4898

Q. That would depend on how many, if any, of the companies on the trade were willing to operate at great loss or greater loss than you would be willing to operate at? A. Yes, I think that is self-evident. 4899

Q. I think I did not put in this contract which you produced with the Smelting Company for 1913, that is it, isn't it? (Handing witness paper.) A. Yes.

MR. KIRLIN: I offer this in evidence.
Marked Defendants' Exhibit 21.

Recess taken until 2 o'clock P. M. 4900

4901 AFTERNOON SESSION.

HENRY M. HUMPHREY recalled.

DIRECT EXAMINATION continued by Mr. Montgomery.

Q. Mr. Humphery, I show you a letter—— A. Mr. Montgomery, pardon me one moment. Mr. Burlingham asked me to produce certain advertisements which I testified I had read and he asked me to produce them, and I have them here. In what form do you wish me to present them?

4902 MR. BURLINGHAM: I will have them marked for identification.

Marked Defendants' Exhibit 22 for identification.

Q. Mr. Humphrey, I show you a letter dated February 21, 1913, and ask you if that is a letter written by yourself to me? A. Yes, sir, it is.

Q. And is that a statement of the steamers upon which you have shipped coffee from Brazil to the United States since 1908? A. Since January, 1908. This is the first, being a statement of outside steamers and the balance
4903 being a statement of shipments by the Lloyd Brazileiro.

Q. Was it made up under your direction? A. It was made up under my direction.

Q. And is accurate? A. And is accurate.

MR. MONTGOMERY: I offer that in evidence.

MR. BURLINGHAM: No objection, subject to verification.

Marked Petitioner's Exhibit 246.

4904 Q. Now, Mr. Humphrey, I show you statement entitled "Statement of Brazil coffee received by Arbuckle Brothers on chartered steamers other than Lloyd Brazileiro from December 6th, 1906, to date" and I ask you if that statement was made up under your direction? A. That statement was made up under my direction, and from December 3rd, 1906, to September 23rd, 1907, inclusive. This is new matter. (Indicating.)

Q. What do you mean by new matter? A. I mean not been before in evidence. But from 1909 to 1912 already appears in the letter of February 21st.

Q. In other words, it goes back to 1906, is that it, Mr.

Humphrey; in other words, this statement goes back to 1906? A. December, 1906. 4905

Q. Whereas, the letter only goes back to 1908, that is, the shipments on outside vessels? A. That is the shipments on outside vessels.

Q. And from 1908 down this statement is a duplicate of what is in the letter as to the charters outside of the Lloyd? A. Yes, sir. Except as a matter of fact there is nothing in there in either one of them for 1908; but that is a proper dividing line.

MR. MONTGOMERY: I offer this in evidence. 4906
Marked Petitioner's Exhibit 247.

Q. I see there were no shipments in this Exhibit 247 during the year 1908? A. Aside from the Lloyd Brazileiro that is all.

Q. Why was that? A. I don't remember at the moment. Our shipments were not large, but I think you will find shipments by the Lloyd Brazileiro in that year. In other words, they had the shipments in that year.

Q. All of them? A. That is what the document shows 4907
and that is correct according to my memory.

Q. Do these statements, Exhibits 246 and 247 cover shipments to New Orleans and New York, both, or only to New York? A. Only to New York. There were some on those same vessels, two of the vessels, that I now recall that went by the way of New Orleans.

Q. But they are not included in these figures? A. Not in those shipments; New York only.

Q. I show you a letter, Mr. Humphrey, dated September 23rd, 1910, signed by Paul F. Gerhard & Company, and I 4908
ask you if that is a letter received by Arbuckle Brothers? A. This is; I received it; it came into my department.

MR. MONTGOMERY: I offer that in evidence.
Marked Petitioner's Exhibit 248.

Q. This letter I notice announces that there are certain steamers that the Prince Line will have to load coffee at Santos and Rio on certain dates in October of that year, 1910? A. Yes.

Q. What, if any, action did you take in regard to that letter? A. I wrote them a letter of which a copy is there.

4909 Q. I show you what purports to be a copy of a letter dated September 24th, 1910, and I ask you if that is the copy you refer to? A. It is.

Q. Was that letter dictated by yourself? A. It was.

Q. And signed by yourself? A. And signed by me.

Q. And sent? A. And sent and delivered as per the memorandum attached.

MR. MONTGOMERY: I offer the letter in evidence.

THE WITNESS: It was not mailed; it was sent by messenger and there is the certificate of the mes-
4910 senger attached.

Letter marked Petitioner's Exhibit 249.

Q. What, if any action, did Gerhard & Company take on that letter, on your letter of September 24th, 1910? A. I received or Arbuckles received and turned over to me Gerhard & Company's letter of September 24. There it is. (Indicating.)

Q. The same date? A. The same date.

MR. MONTGOMERY: I offer that in evidence.

4911 Marked Petitioner's Exhibit 250.

Q. Now, Mr. Humphrey, in addition to these letters in regard to these shipments of coffee from Santos and Rio, have you ever had any talk with anybody representing the Prince Line here in New York in regard to such shipments? A. I had a conversation with——

MR. KIRLIN: I object to this as incompetent, and Mr. Gerhard having already testified he had no authority over coffee, or any inward cargo, or the
4912 booking of inward cargo.

Q. Answer Mr. Humphrey? A. I had a conversation previous to that letter, a short time previous.

Q. With whom? A. With Mr. Paul F. Gerhard; he called at our office.

Q. You know Mr. Gerhard well? A. I know him personally.

Q. Did he call at your request? A. He did not.

Q. He called upon you for what purpose? A. He stated that he had——

MR. KIRLIN: I object to the conversation for the

reason stated, and let it be understood that all con- 4913
versation is subject to the objection.

MR. MONTGOMERY: Yes.

Q. State what he said to you? A. He stated in substance that they had steamers at Santos that they needed coffee cargo for and wanted to know whether we could not give them some. Do you want my reply?

Q. Go ahead and tell the whole story? A. The Prince Line—he was speaking for the Prince Line as agent—why, I said, "Mr. Gerhard, you won't take our coffee on any 4914
terms."

Q. What reply did he make to that? A. Why, he said, "I didn't know that," and looked surprised.

Q. Was there any conversation about remedying the situation in that regard? A. I told him exactly what the situation was in substance, as I have already testified here.

Q. Did he offer to do anything about it? A. No, that ended the conversation and then these letters kept on coming. I think that was the next letter following that letter —what I have submitted now—followed the conversation with an interval of, it may have been an interval of a month 4915
or so.

Q. That is the exhibit of September 23rd? A. Yes.

Q. Have you received other letters from him since September 24th, 1910? A. Yes, sir.

Q. And that is from Paul F. Gerhard & Company? A. Yes. Here is one dated October 22nd, 1910.

Q. And is this attached to it, the reply? A. The reply.

Q. And the reply is from them? A. And Mr. Gerhard's reply.

4916

MR. MONTGOMERY: I offer in evidence letter from Gerhard & Company to Arbuckle Brothers, dated October 22nd, 1910.

Marked Petitioner's Exhibit 251.

MR. MONTGOMERY: Now I offer what purports to be copy of letter of October 24th, 1910, from Arbuckle Brothers to Paul F. Gerhard.

Marked Petitioner's Exhibit 252.

Q. That is a copy of a letter dictated by yourself, is it? A. Yes, sir.

Q. And sent to Gerhard & Company? A. And sent.

4917 Q. And you received a reply to that? A. I received this letter, which is a reply, yes.

Q. Dated October 24th, 1910? A. Yes, the same date as the other letter.

MR. MONTGOMERY: I offer that in evidence.

Marked Petitioner's Exhibit 253.

Q. Did you take up with the Prince Line agent in Rio or Santos the question of receiving your cargo after receiving these letters? A. I should have to refresh my
4918 memory. The tender was made down there of shipments in evidence already filed.

MR. BURLINGHAM: I move to strike that out.

MR. KIRLIN: I object to the statement about tendering as incompetent and immaterial and beyond the witness' knowledge.

THE WITNESS: I did not do anything further from New York.

Q. Did you instruct your agents to take the matter up
4919 with them? A. I gave them no fresh instructions. They were already under instruction to tender the coffee.

Q. For the Prince Line? A. For the Prince Line, and for Lamport & Holt Line.

Q. And have those been the continuing instructions, or were for some time? A. They were there under those instructions at the time.

Q. For a period? A. For that period covered by these dates.

Q. Did you ever receive any cargo by the Prince Line
4920 during that period? A. We did not.

Q. How long a period were your agents instructed to offer coffee to the Prince Line? A. Do you want me to give dates? Oh, approximately from early in 1910 up to about—close up to date.

Q. How much coffee have they succeeded in having the Prince Line take and carry to New York?

MR. KIRLIN: I object on the ground that it does not appear any tenders were made to the Prince Line of coffee by the agents of Arbuckles.

Q. Answer it, Mr. Humphrey? A. No, not a bag.

Q. I show you Defendants' Exhibit 22 for identification 4921
and ask you what the papers comprising that exhibit are? A. They are the advertisements of the Lloyd Brazileiro which appeared in the New York Commercial Bulletin.

Q. Journal of Commerce and Commercial Bulletin? A. Journal of Commerce and Commercial Bulletin under dates of Saturday, April 27th, 1912, May 1st, 1912, May 13th, 1912, May 31st, 1912, and also the same advertisement which appeared in the Tea & Coffee Journal of February, 1913, and March, 1913.

Q. Are those the advertisements referred to in your 4922
cross-examination by Mr. Burlingham at the previous hearing? A. They are.

Q. And those are not copies, but the original cut out of the Journal of Commerce? A. Cut by me from the original and in each case the name of the journal and the date is kept with it.

MR. MONTGOMERY: I offer in evidence Defendants' Exhibit 22 for identification.

Marked Petitioner's Exhibit 254.

4923

CROSS-EXAMINATION by Mr. Kirlin:

Q. Were you in Brazil at any time during 1910 and 1911? A. No, I was not.

Q. Did you personally make any tenders of coffee to any steamships of the Prince Line in Brazil? A. I did not.

Q. Or any other line, conference line? A. I did not. You do not refer to tenders made under my instructions? Whether I personally made any such tender?

Q. Yes. A. No, I did not.

4924

Q. You say you gave instructions to your agent to make tenders? A. I did.

Q. How did you communicate the instructions to the agent? A. By letter and by cable, both.

MR. KIRLIN: I move to strike out all the testimony of the witness as to instructions given by him to his agents in Brazil to tender coffee to the Prince Line as not the best evidence and incompetent.

MR. BURLINGHAM: I make the same motion with regard to the alleged instructions with regard to tenders to the Lamport & Holt Line.

4925 THE WITNESS: When I say I did, I signed the firm name by instruction.

Q. When I say you, I mean Arbuckle Brothers? A. Yes.

Q. Mr. Humphrey, you have stated that you told Mr. Gerhard that the Prince Line would not carry your coffee at all? A. Yes.

Q. On what information did you make that statement to Mr. Gerhard? A. I made it on information or letters from Brazil, letters addressed to the firm by the firms in
4926 Rio de Janeiro and in Santos.

Q. And upon no other? A. I do not recall any other at the moment.

MR. KIRLIN: I move to strike out the testimony of witness about statements of the witnesses referred to as incompetent and hearsay.

Q. I did not hear your previous testimony that you said that any tenders were made by Arbuckle Brothers to the Prince Line of coffee that were refused? A. I have said
4927 and filed a pile as high as that (illustrating).

Q. Never mind about the file; I want to know whether you said it? A. I have said it.

Q. Upon what information did you make that statement or so testify? A. Upon the documents received, from our house in Rio de Janeiro and the house in Santos and also I think the house in Victoria.

Q. That is upon letters received from your offices to your firm here? A. Yes. You say you refer to testimony which you have not heard. Shall I tell you exactly what that was?

4928 Q. No.

MR. KIRLIN: I move to strike out the testimony of the witness as to tenders of coffee made in Brazil as based upon hearsay and incompetent and not the best evidence.

Q. I think you said at the time these letters were received your agents were under instructions to tender coffee, standing in substance? A. To tender coffee because we wished to ship coffee all the time and they constantly had shipments which they could tender to these boats.

Q. And you refer then to instructions which were con- 4929
tained in written communications to your agents? A. Written or cabled.

MR. KIRLIN: I move to strike out the statement of the witness that the agents were under instructions at that time as not the best evidence and is incompetent.

Q. Did you say that the agents down there made tenders at or about the time of these letters that have been put in evidence here to-day were written? A. My remembrance 4930
of the letters or tenders which are in evidence here—my remembrance is that they were made by these same boats. I would not swear positively to it; I would have to refresh my memory from the documents.

Q. That testimony you base on communications received from your agents, cables and letters? A. Well, in every case they say they enclose the documents and the documents show the tender signed by the individual who tendered it—I mean the messenger, and the answer.

Q. All the communications you received from your 4931
agents with certain enclosures that are with them? A. Yes.

MR. KIRLIN: Move to strike out the testimony of the witness on that subject as incompetent and not the best evidence, and as no evidence of tender.

Q. Mr. Humphrey, when you received this letter, dated September 23d, Exhibit 248, you recognized it as the usual trade circular sent out by the steamship agents to the trade advising when steamers were expecting to sail, did you 4932
not?

MR. BALDWIN: He has not said so.

A. I did not say so. It was long after a conversation and I understood it to indicate——

Q. You have received letters of that kind before, haven't you? A. Yes, sir.

Q. Many times? A. I have one of them here now.

Q. Didn't you recognize that as a circular sent out——

MR. BALDWIN: I object how he recognized it; it speaks for itself.

4933 A. It seems to me it speaks for itself, and I recognize just what it is. It does speak for itself. In indicates steamers on the berth.

Q. It is the usual notice sent out by steamship agents to the trade? A. I never happened to have it from any other steamship company or line, but I have had similar advices of particular steamers and asking some particular question in the past.

Q. You replied to that on the next day and requested him to book certain coffee? A. Yes.

4934 Q. And you received a letter from him on the 24th advising that he had no authority to book coffee in New York? A. I received the letter on the 24th as follows.

Q. And then you received another similar letter from the office on Octobed 22nd advising of the sailing of ships? A. I think that is quite correct.

Q. And you wrote back then asking him to book coffee? A. Yes.

Q. You knew then he had not authority to take coffee? A. I didn't know what change might have occurred.

Q. He had already told you? A. He told me, but time
4935 had elapsed for him to communicate with Brazil, and I considered it a reopening of the matter.

Q. Wasn't this part and parcel of the plan that you had to which you testified before of laying the foundation for a lawsuit? A. Not at all. He came of his own motion and tendered us the room and it occurred to me that I should snap him up there and that would not be fair, and would introduce a disagreeable element, and I did not care to do it.

MR. KIRLIN: Move to strike out the testimony of
4936 what he thought.

THE WITNESS: I thought you asked me what I thought.

Q. What room did he tender you? A. He said he had it and wanted us to fill up the room; wanted to know whether we could not give him something to fill his vessels.

Q. You say he tendered it? A. I considered that a tender. I am using now the phraseology as near as I remember it. That is what he came for.

Q. Did he come to tender you room? A. He came to

ask us for coffee to fill up his steamers; that is what he 4937
said in effect.

Q. Did he talk anything about rates? A. No, we did not get as far as that. I simply said why, you won't take our coffee.

Q. Do you mean to say he came and tendered you room and that you did not tender him coffee? A. Yes; I mean to say just that.

Q. Did he tell you he had no authority to make contracts for coffee? A. No, sir, he would not come to us and solicit coffee to fill up his vessels before this—— 4938

Q. He knew he was not agent in Brazil? A. I didn't know anything of the kind.

Q. Did you ever make any contracts with him for coffee in your life? A. I have in the past.

Q. Since you were agent for the Prince Line? A. Not in recent years. I don't know whether the Prince Line or not; it goes some distance back.

Cross-Examination by Mr. Burlingham:

Q. When was it you were last in Brazil? A. In 1896. 4939
My connection with Arbuckle brothers began in 1906 and my last time in Brazil was ten years previous to that.

Q. Your shipments from Brazil fell off very greatly, didn't they, in 1910 or 1911? A. Yes, sir.

Q. Which year was it? A. Both, I think.

Q. What was that due to? A. Due to the fact that being unable to supply the Mississippi Valley, cost and freight by steamers except to our disadvantage, we bought very heavily of coffee in New York, large amounts, a hundred thousand bags at a time, from Crossman & Sielcken, and from the Coffee Exchange, expecting an advance in the 4940
market, and we used that advance in the market, to get the Mississippi Valley trade from New York instead of cost and freight from Brazil. That is the way in which we met the issue.

Q. What do you mean by "except to your disadvantage"? A. I mean exactly, specifically, we had done it by one or two steamers and we found that in chartering a steamer and allowing it to go to New Orleans in one case it delivered a cargo of about 65,000 bags; we had 8,000 bags that we had sold cost and freight by way of New Orleans, and our expense in going into New Orleans by way of New

4941 York was so great we could not compete with the cost and freight by way of New Orleans, and I should say incidentally we were entirely driven out of the cost and freight business by way of New Orleans, and I told you the way in which we met it; in two years we were not shipping from Brazil.

Q. You might explain once more what you mean by cost and freight business; what you were buying for other business? A. For account of other people, selling for shipments under letters of credit; most of the business is done in that way. I testified to that.

4942 Q. Did the valorization scheme have anything to do with the falling off of importations to the United States? A. None that I know of. You mean from the importations?

Q. Yes? A. None whatever. It was our large purchases, of course. We advanced on our valorization coffee. There was some valorization coffee shipped to us. In 1907 and 1908 there was some coffee shipped that was valorization coffee on which we advanced before the valorization scheme was fully developed.

Q. How about 1909 and 1910? A. We bought a good deal 4943 in New York in both 1909 and 1910, a large amount; several hundred thousand bags each year.

Q. Does your firm in Brazil have places to store coffee? A. Yes, we own our own warehouse.

Q. And in Santos as well as—— A. No, Santos is small, because the public warehouses there are fine. We have stored in public warehouses, if that answers your question, to a large extent. The amount stored in warehouses of our own is a very small matter.

Q. You have been large charterers? A. Yes.

Q. And carry your coffee? A. Yes.

4944 Q. I think that 1910, as I make it, the coffee that you imported into this country by chartered vessels was 279,242 bags, and that same year you brought in by the Lloyd Brazileiro 157,616 bags? A. Yes, sir.

Q. The first of those items you can confirm easily there, cannot you?

MR. BALDWIN: What are you referring to, Mr. Burlingham?

MR. BURLINGHAM: His own exhibits.

A. I should be obliged to foot them up for each year—

the aggregate for the years is given here—before I could 4945
tell.

Q. Do you get my question? A. I do not quite get it. I would like to make an explanation. Besides the Lloyd Brazileiro and the tramp steamers we shipped an occasional tramp which came along, but which we shipped at a bad rate where we did not charter the vessel; we put some on.

Q. But if you look at that Exhibit 247 I think you will see that in 1910 you brought into this country from Brazil by chartered steamers 279,000 and odd bags, isn't that so? 4946
A. Apparently that. It is very closely that I think. That is correct.

Q. Now, according to the information we received this morning from Mr. Slechta, in that year 1910 the Lloyd Brazileiro brought coffee shipped by you from Brazil amounting to 157,616 bags? A. How did that compare with the record you have there? The separate record for the Lloyd Brazileiro? That is a complete list.

Q. That is right. I took it right from that, 157,616; I took that from Exhibit 246, the letter from your firm to Mr. Montgomery of February 21st. Now, I 4947
want you to explain how it was that that year your shipments were so very large apparently by chartered vessels and so small comparatively by the Lloyd Brazileiro, in view of the fact that the previous years, 1909 and 1908, the greater part of your shipments had been by the Lloyd Brazileiro? A. It is a question of rates and time of sailing of vessels.

Q. Couldn't you get the service you wanted from them in 1910? A. Our business has not been Lloyd Brazileiro; our business has been chartering vessels mostly from Lon- 4948
don and we preferred to. We gradually worked into the Lloyd Brazileiro because it suited our shipments at the time. It came in right in that year.

Q. Now, I find no figures then for 1911; are there any; didn't you ship anything in 1911? A. I think what you have is a complete record of any vessels chartered and of the Lloyd Brazileiro, whether chartered or not.

Q. On this Exhibit 247, which is a statement of the coffee received by Arbuckle Brothers on chartered steamers from December 6th, 1906, to date, I find no entries whatever for 1911. Does that mean no coffee was imported by chartered

4949 steamers in that year? A. That is my remembrance; the chartered rates were higher than the Lloyd Brazileiro.

Q. It did not pay you to charter then, that is the point, isn't it? A. It did not pay us. It suited us better to ship by the Lloyd Brazileiro.

Q. Now, according to this Exhibit 246, your letter of February 21st, to Mr. Montgomery, in 1907 you exported to this country from Brazil only 77,413 bags by the Lloyd Brazileiro; that is right, isn't it? A. I think that is right. That is my remembrance. It was small.

4950 Q. And in 1912 it jumped up to 254,126, that is right, isn t it? A. Yes.

Q. And in 1912 you brought in in addition by chartered vessels 136,882? A. Practically correct.

Q. Your relations to the Lloyd Brazileiro are merely business relations; you do not wish to favor them I suppose? A. No.

Q. When it is cheaper to charter vessels you will charter vessels? A. Yes.

Q. And when it is cheaper to send by them you will send by them? A. Yes.

4951 Q. You have had no trouble in bringing all the coffee up from Brazil you wanted to bring; they had plenty of space for you when you wanted to put your cargo on their boats? A. There were times when we hadn't ships coming; there had been quite intervals there. I remember once of about I think two months when there was no vessel they had on.

Q. Now, in spite of these alleged tenders to the other lines you brought all the coffee from Brazil that you wanted to bring? A. No, not as we wanted it at all; we

4952 wanted to bring coffee to New Orleans and we had no means or getting it there. That is our complaint more particularly.

Q. What is your complaint particularly? A. That we were crowded out of the cost and freight business by way of New Orleans to our own Chicago house.

Q. Who crowded you out? A. No steamers on which we could ship a bag. The Lloyd Brazileiro did not run there and we had to charter a full steamer.

Q. And that was too expensive? A. It was too expensive to ship it to New York via New Orleans and have sixty odd thousand bags go by way of New Orleans only [illegible] down there.

Q. It cost too much to make that detour? A. Yes. 4953

Q. And have all the charges coming in and expenses and delay of vessel and go on to New York with the greater portion of the cargo? A. At that time we could not ship the coffee as we wanted to.

Q. And your complaint is there is no line running to New Orleans? A. No line running to New Orleans that will take our coffee at any price, under any circumstances.

Q. How long does it take to load coffee down in Brazil?

MR. BALDWIN: If he knows of his own knowledge. He says he has not been there since 1896. 4954

A. We can load from 10,000 to 15,000 bags a day.

Q. Are there many delays in Brazil in the matter of loading and discharging the vessels? A. No, not as a rule. There are some I suppose, but ordinarily not.

Q. You have a distinct advantage in having your good facilities for storing your coffee down there, haven't you, so that when the steamer arrives it is ready? A. No, we only send it to the public warehouse, and the public warehouse is right at the dock and it is shipped immediately. 4955

Q. Have you warehouses of your own? A. We have, as I say, small—in other words, this coffee you are talking about largely was shipped from the public stores.

Q. You mean all of this coffee that covers this period of the last six years? A. Not the last six years, so much as the last two or three. We accumulated coffee during that time.

Q. And you do some large chartering business—I suppose you accumulate your coffee in the warehouses until you get enough to supply a ship? A. Enough or more. We have had a considerable stock there. 4956

Q. That is pretty expensive, isn't it?

MR. BALDWIN: How is that material whether it is expensive or not; I object to it.

A. It is expensive carrying coffee anywhere; expensive in the way of interest, and so forth.

Q. How much does it cost to store coffee there per bag per month? A. I don't remember.

MR. BALDWIN: Same objection.

4957 Q. Give it approximately? A. Approximately perhaps 4c a bag.

Q. Per bag per month? A. Per bag per month is the New York rate and it is not far from that.

RE-DIRECT EXAMINATION by Mr. Montgomery.

Q. Mr. Humphrey, I understood you to say that you and Mr. Gerhard had talked before this, or that it has been spoken of in regard to some shipments of freight? A. Yes.

Q. Was that outward freight or inward freight? A.
4958 Freight from Brazil.

Q. When was that? A. It was between—I cannot give you the exact date, but it was between July 23rd, 1910, and September 23rd, 1910; my impression is that it was in August, 1910.

Q. I think you do not just understand me. Mr. Kirlin asked you if you had ever talked about shipments of inward freight and dealt with Mr. Gerhard as to shipments of inward freight.

M. KIRLIN: No, whether he had ever made any
4559 contracts with Gerhard as agents for the Prince Line.

Q. For inward freight? A. I said I had in no recent date. I had of the previous date with another firm.

Q. When was that? A. Something like ten years before.

Q. He was then the agent of some concern? A. No; no shipments were—the Prince Line shipments at that time were with Mr. Seager, the agent at that time, if I remember right.

4960 Q. Who was Gerhard with at that time? A. He was in a broker's business. I do not remember the details now. They were agents of the American Line up to the time that that line failed The United States & Brazil Mail Steamship Company.

Q. And it was as agent of that line that he dealt with you? A. Yes; he did deal with me as agent of that line.

Q. And you were in the habit, were you, of dealing with him at that time in regard to your inward shipments on coffee? A. To some extent. It was more with his partner than with him personally, but that is pretty well back, of course.

MR. KIELIN: Twenty years ago, isn't it? 4961
THE WITNESS: About that.

Q. This was after the time Mr. Daniels had been to you to solicit your shipments? A. My remembrance is that the exhibit shows it was in May, 1909.

Q. And Mr. Daniels came to you? A. That correspondence first began with Mr Daniels when he first called at our office, that is my remembrance. It is in evidence whatever it was.

Q. You testified here that some years you shipped more 4962
by the Lloyd than you have by chartered steamers, and some years you have shipped more by chartered steamers than you have by the Lloyd, is that right? A. Practically if it shows that. I would say, however, I am not sure. I don't remember dividing the years in that way. (After examination of exhibit.) Yes, in that way—that statement is 1908.

Q. What influenced you as to whether you would charter or ship by the Lloyd? A. The rate and time of sailing and the size of the vessel.

4963

Q. And due, I take it, that the rates at times—— A. Also rate of insurance on the vessel. That also applies.

Q. How do you make your charters; you make a charter simply from Brazil to New York? A. We make the charters through a ship broker in London; sometimes our Brazil house makes a contract and occasionally we make a contract here. It is generally done by London on outside vessels and by the Brazil house in the matter of the Lloyd Brazileiro, but not always. We have done it both ways.

Q. But in either event it is one trip one way, is it not? 4964
A. One trip one way; only from Brazil to New York.

Q. And at times it has cost more per bag to carry on that basis than to carry at the Lloyd rates, is that correct? A. I wouldn't say just that way. We have taken whichever rate was the cheapest and other conditions being equal.

Q. Is that the fact though? A. That is the fact.

Q. That at times the charter rate—— A. In case any of these steamers, other things being equal we have taken whichever was the lowest rate, chartered steamer or—the other things being equal, I have already indicated what they are.

4965 Q. And generally speaking when you took the charter rate it was lower than the Lloyd rate? A. No, it was the same sometimes—sometimes it figured out the same.

Q. But it was an important consideration? A. I wouldn't say so. Between those two they have been moderately close.

Q. I do not mean there was an important difference; I mean the consideration of how the rates compared was an important consideration, wasn't it? A. It was one of the important considerations, and the time of sailing and the
4966 size of the vessel was a very important consideration.

Q. Now, in regard to your shipments to New Orleans, explain a little more fully why you do not charter ships to go to New Orleans; you said something about 10,000 bags going to New Orleans and 60,000 coming to New York; why not ship a full load to New Orleans; why is not that practicable? A. Because we only shipped to New Orleans what we have sold cost and freight to the interior. We do not store coffee in New Orleans.

Q. And cost and freight is or is not practical to accumulate cargoes for cost and freight business? A. It is
4967 not.

Q. Why not? A. For the reason that one shipper wants his 250 bags shipped immediately, another wants his shipped in 30 days; the regular term "prompt shipment" means a shipment in 30 days.

Q. A lack of coincidence in the times of the orders that would enable you to accumulate a cargo and ship it in all these cost and freight orders? A. We cannot do it with cost and freight orders.

Q. And that is one reason why the service of a line or
4968 lines is of value to you? A. Yes.

Q. And would be of value to you in the shipments to New Orleans especially? A. Yes.

Q. Now, you said that you shipped by the Lloyd when it was to your advantage to do so and have chartered when that was to your advantage? A. Yes.

Q. That privilege is all you ever asked of the conference lines, isn't it, in your talks with Mr. Daniels and so on, the privilege to use the lines when you wanted to? To charter for full cargoes also when you wanted to do that? A. Yes. But no question of rebate at all; without any rebate.

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 169

THE UNITED STATES, APPELLANT,

vs.

PRINCE LINE, LIMITED, PAUL F. GERHARD, CHARLES Z. GERHARD, FRANCIS J. ZIMMERMAN ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

## RECORD: VOLUME 4.

TESTIMONY OF WITNESSES FOR THE PETITIONER.

FILED JUNE 16, 1915.

# United States District Court

SOUTHERN DISTRICT OF NEW-YORK.

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UNITED STATES OF AMERICA,

*Petitioner,*

*against*

PRINCE LINE, LIMITED, and OTHERS,

*Respondents.*

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# RECORD—VOLUME 4

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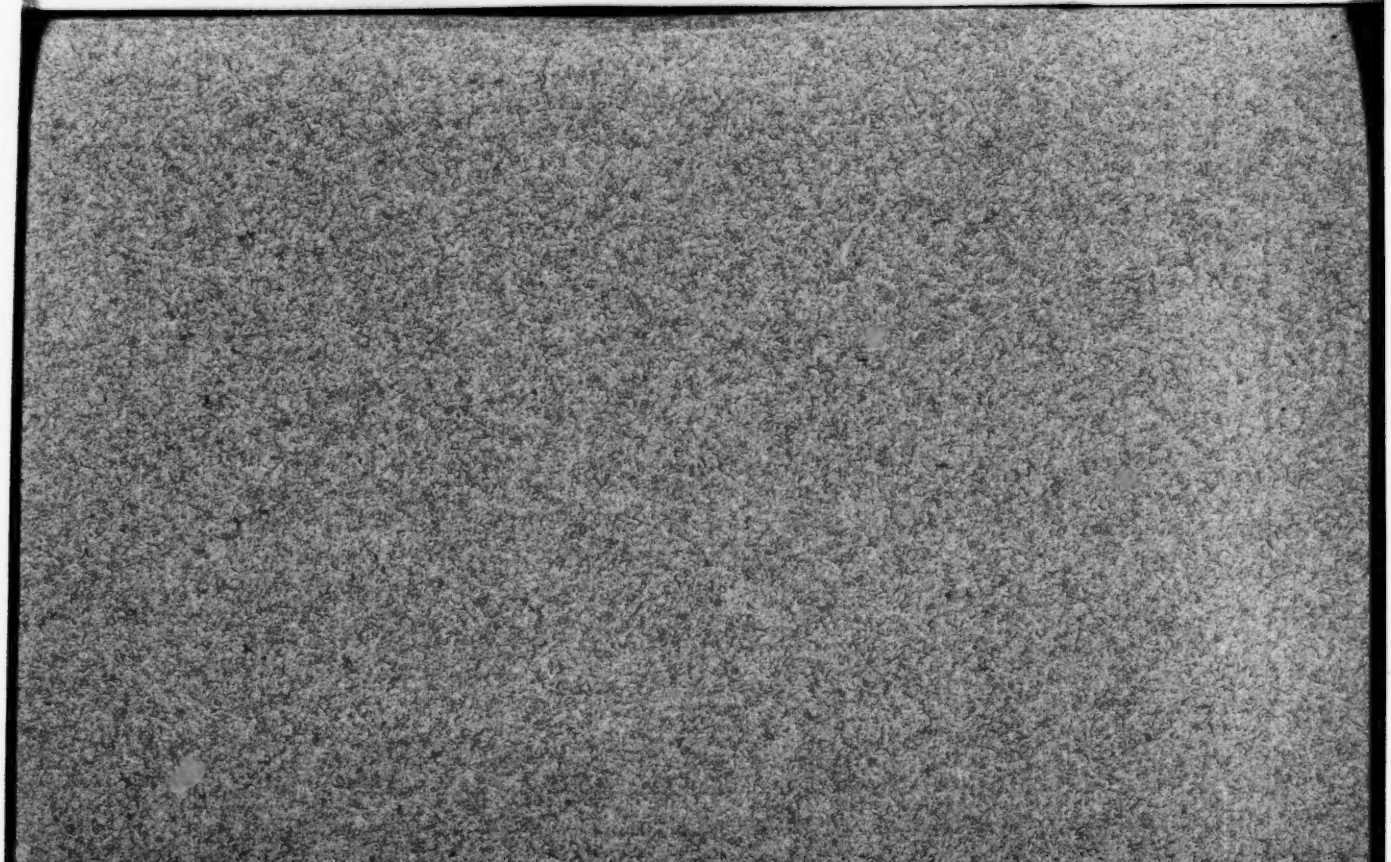
## Testimony of Witnesses for the Petitioner.



UNITED STATES OF AMERICA

v.

PRINCE LINE, LIMITED, ET AL.

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RE-DIRECT EXAMINATION by Mr. Baldwin: 4969

Q. Mr. Humphrey, you stated in answer to Mr. Burlingham that your chief complaint was that you could not get any service, or there was no line running to New Orleans. Did I understand you correctly in that, that there was no line running to New Orleans? A. None outside of the conference lines.

Q. That is what I mean; none outside of the conference lines? A. None outside of the conference lines.

Q. And the conference lines would not carry your coffee? A. And the conference lines would not carry our coffee. 4970

Q. As a matter of fact, you know it to be true, do you not, that both the Lamport & Holt and Prince Line do run boats from New Orleans to Brazil? A. Yes.

Q. Just one question about the proportion of your chartering and your sending by the Lloyd Brazileiro. In the year 1910 I think your memorandum showed that the amount of coffee that you shipped from Brazil to New York was very much larger by the chartered boats than by the Lloyd, am I right about that in 1910? A. I think that is right.

Q. And you have testified with reference to when you 4971 chartered rather than to send by the Lloyd Brazileiro, that of the two considerations that chiefly moved you, one was the rate and the other was time? A. The time and rate of insurance on the vessel.

Q. When you actually sent your coffee from Brazil to New York in chartered boats in larger proportions than you sent by the Lloyd Brazileiro was it or was it not true that the charter rate was less than the Lloyd Brazileiro rate? A. I do not assert that at all.

Q. How about it; I am asking you? A. I have no re- 4972 membrance of the two, but as a general proposition we prefer the chartered boats. We had always been doing it that way and more than that we had our own form of charter party and a chartered boat has no dock; they unload at our own dock. Some question would come in, the Lloyd Brazileiro met with delays and dependent upon the size of the cargo that we might have, and the boats that they might have offering; but it has been perfectly free as to which we should take, the boat, the time of sailing the quantity, the rate of insurance, all entered into the question of how we should ship.

4973 Q. Did it not happen at times that the actual charter rate that you paid was less than the Lloyd Brazileiro rate? A. Yes.

Q. Was that at a time when the Lloyd Brazileiro rate was in the neighborhood of 26 to 30c per bag? A. Yes. We chartered as low as 22½ and I now remember during that time 22½c and 25c per bag.

Q. Do you happen to know what the conference rates were at the same time? A. I can give it, but it is only from memory.

4974 Q. Have you any general recollection about it at all? A. My remembrance is it was 40c; it may have been 35c for a short time, but my remembrance is it was 40c, and at times we have chartered it at 27c a bag and five per cent. primage, when the rate was 45c a bag and five per cent. primage; and my remembrance is we chartered at 28c a bag and five per cent. primage when the conference lines were 50c a bag and five per cent., all of which can be readily verified from the Exchange circulars and our own bills of lading.

4975 Q. Now, Mr. Humphrey, who is the agent in Brazil, either at Rio or Santos where these tenders were made to the conference lines that you spoke of.

MR. BURLINGHAM: We object on the ground that there is no proof any tenders were made.

Q. To whom you gave directions to make the tenders; what is his name, your representative; in other words, who did it? A. Our representatives who did it?

Q. To whom did you give instructions there to make tenders, if tenders were made? A. I gave it to the head
4976 of the house, addressed to the firm or to the man as head of the house, the manager; Louis R. Gray in Rio de Janeiro, Fred H. Fairchild in Santos and Mr. Bryan, also in both places, a substitute man.

Q. Are they in the employ of the firm? A. They are in the employ of the firm in the same positions now.

Q. Have been for some time? A. They have been for some time.

Q. During all of this period of these alleged tenders? A. Yes.

RE-CROSS EXAMINATION by Mr. Kirlin. 4977

Q. Mr. Humphrey, has it been the practice of Arbuckle to carry only their own coffee in chartered ships? A. Practically so. There have been some small amounts that have been sold cost and freight. That I included in at New Orleans, but it is a comparatively small matter. You mean have we taken over for other people? No.

Q. No, I mean cost, insurance and freight shipments? A. Yes.

Q. You do carry those on your chartered ships? A. We do where we have made the sale ourselves, yes; and that is 4978 almost very largely to our Chicago house. That is in the date you are talking about now.

Q. I am talking about the time you have been talking about here covered by your evidence? A. Yes, covered by that letter.

Q. Now, in the cost, insurance and freight sales the coffee is sold on the basis of a certain freight rate, is it? A. Yes, sir.

Q. That is, you sell the freight rate as well as the coffee? A. It is cost and freight; no insurance. 4979

Q. That is, you sell the coffee and the freight? A. Yes.

Q. And in order to get that coffee up here you have to buy the freight room for it? A. Yes, certainly.

Q. Didn't Mr. Cook in a letter to you offer to take your business on the same terms as other shippers were given?

MR. BALDWIN: I object to that as asking for the contents of a letter, which would be the best evidence.

Q. Didn't you receive a letter from Mr. Cook in which 4980 he made that specific offer to you on behalf of the Arbuckles——

MR. BALDWIN: I object to the form of the question, asking for the contents of a letter.

Q. When I say you, I mean a letter addressed to Mr. Arbuckle or the firm? A. There was a letter addressed to Mr. Arbuckle personally, which is part of the evidence here.

Q. In this letter to which you have just referred, Petitioner's Exhibit 186, occurs this passage: "On my recent

4981 visit to Brazil"—I think you produced this letter, did you not? A. Yes, sir.

Q. (Reading.) "On my recent visit to Brazil where I had the pleasure of seeing your representative in Rio and Santos, I gathered the facilities which we could offer them and you, the same as we do to our other friends, might easily outweigh the benefits which you gain by chartering for full cargoes, which, as is well known, is not always satisfactory operation when everything is taken into consideration". Now, don't you understand from that pass-
4982 age in that letter that the offer was made to carry the cargo of Arbuckles on the same terms as the cargoes of their other friends were carried at and that you insisted upon having the additional advantage which other shippers did not have of chartering ships for full cargoes and that negotiations fell through on account of that difference on your part?

MR. BALDWIN: I object to what he understands about the letter; it speaks for itself.

4983 Q. Isn't that the way the matter really stands? A. I understand——

MR. BALDWIN: I object on the further ground that this letter according to the witness' prior testimony was handed to him quite sometime after it had been received, without any comment whatsoever from Mr. Arbuckle, and that he himself was not privy to it in any way?

4984 A. That is true. That all appears in the testimony which is on record here when I appeared on the stand before.

Q. Arbuckle was a member of the firm at that time, wasn't he? A. He was a member of the firm and had recently been in London and seen Mr. Cook.

Q. But this letter is dated November 28th, 1911? A. 1911.

Q. And it refers to a visit which Mr. Cook made to Brazil, when he says he saw your representative, and which he refers to as a recent visit? A. I did not know he had been in Brazil. I know in a general way he is around different parts of the world. I never heard from our people down there as to any such visits as that.

Q. Isn't it within your knowledge through this letter 4985
and otherwise that that offer was made to your firm to carry all your coffee on the same terms as the coffee they carried for other shippers, and that your firm declined to accept it and insisted upon having in addition the right to charter ships for full cargoes? A. I have already testified fully as to that on the stand. I do not accept his exact phraseology there; it is not put quite as it should be. It is Mr. Cook's argument. He is very able in arguing his side.

Q. That was an offer to you? A. Any offer that was made to us was made by Mr. Daniels. 4986

Q. I am calling your attention to that offer by Mr. Cook? A. I don't know anything about any offer from him.

MR. BALDWIN: I object to that. He may have said he made that statement to somebody down there and it may be so involved it would not be an offer.

Q. Did not Mr. Daniels send you copy of the cable received from Mr. Cook, which cable explicitly offered to 4987
your firm to carry all of their goods on the same basis as the cargoes of other shippers were carried, but disagreeing to your condition that you must have the right of chartering full cargoes in addition? A. I do not remember any such cable. We had some talk with Mr. Daniels in reference to cabling, but no explicit cable was ever sent to us.

Q. While they are looking for that cable, which I understand is in evidence, I will read another passage from this letter of November 28th, 1911; "I think I made it clear to 4988
you that we would welcome you back with open arms but that in view of altered circumstances it was no longer possible for us to give you any preferential terms except at the risk of disturbing our present harmonious relations with the rest of the trade and which was a proceeding we could not contemplate." What were the preferential terms that were referred to as being no longer possible? A. I don't know what Mr. Cook refers to at all.

Q. Is that before your time? A. No, sir; I don't know anything about it. It is a personal letter from Mr. Cook in which it is a resume of what has occurred and his way of putting it.

4989 Q. Does Mr. Arbuckle reply to that letter? A. I don't know.

Q. Didn't you produce any reply to any correspondence you produced here? A. No, I don't think we have any reply to it. He handed it over to me in clearing up his desk.

Q. Have you looked into your files, official and private, to see whether there was a copy in that of a reply to this letter received from Cook under date of November 28th, 1911? A. I have not searched for it because I had not the
4990 remotest idea there was any reply.

Q. Will you be good enough to have a search made and see whether there is any reply? A. It is not a firm matter at all. It had been our Mr. Arbuckle's personal desk, and in clearing up his desk he came across it and handed it over to me.

Q. Why do you say it was a firm matter? A. Mr. Arbuckle was not shipping coffee on his own account, was he? A. It is a personal matter; anything addressed to the firm would go into the firm files. That would be Mr. Arbuckle's personal file if he wrote any letters personally.
4991 Q. When he spoke of welcoming you back with open arms did you think it referred to Mr. Arbuckle as an individual, or to the business of the firm of Arbuckle Brothers? A. I don't know how Mr. Cook referred to it. Mr. Daniels said he would welcome us back and we understood he was talking for the firm, although he was talking to Jamison at the time.

Q. This letter of November 28th, 1911 was written and received after the dates on which you have testified upon information received from your agent, which testimony
4992 has been objected, about tenders being made in Brazil, was it not? A. Tenders were made before and after that, both.

Q. Now, you have not yet told me whether you will make a search for Mr. Arbuckle's private letter book or the firm letter book to see if you can find a reply to that letter? A. I will do anything I can, but I would not know where to look for it. The record of the thing, anything connected with it. Mr. Arbuckle had his private affairs, and coming across that letter he turned it over to me.

MR. BALDWIN: Mr. Kirlin, is there any reason you cannot produce the original reply addressed to Cook?

THE WITNESS: I am absolutely positive if Mr. Arbuckle made the reply to that I would have seen the reply before being sent and would have known of the reply if there had been any reply made. 4993

Q. That would seem to imply it was a firm matter instead of a personal matter? A. He would make it a firm matter by calling me in connection with that department.

Q. Mr. Arbuckle was not shipping any coffee on his own account? A. And the whole tenor of the letter is a personal matter. They exchanged courtesies in London and if Mr. Cook had come over they would have exchanged courtesies with Mr. Cook here, and this refers to that and incidentally he refers to business matters of the firm. 4994

MR. SPOONER: That does not make it any the less a business matter.

THE WITNESS: It was not connected with any business at the time; it was a resume of what happened from a friendly standpoint.

Q. The general tenor of that letter is that Mr. Cook was trying to get your coffee business back, wasn't it? 4995

MR. BALDWIN: I object; that speaks for itself. He has already stated it is simply a resume from Mr. Cook's standpoint.

MR. KIRLIN: The last paragraph of the leiter says "I do not, however, propose now to labor the question, feeling that after what took place between us verbally in London your good firm will give it every consideration, and with a result satisfactory to us."

MR. BALDWIN: But you are asking the tenor of it; what is the matter with the letter speaking for itself? 4996

MR. KIRLIN: Nothing the matter with it——

MR. BALDWIN: The man did not get the letter; it was not sent to him and asking him what is the tenor of letter when it is in evidence, is not right.

Q. What I do not understand is how in the face of that letter that Mr. Cook was trying to get the business of your firm you did not give him the business; you claim that they would not carry your coffee; does it mean that you split

4997 up on the matter of terms? A. No, I explained fully when I was on the stand before. It is a matter of record there why we did not do it, because they refused to allow us to ship by other lines if we chartered steamers.

Q. And the reason for that was that it would give you an advantage over other shippers? A. No, we chartered steamers outside.

Q. No, that is the reason they assigned to you for not giving you that privilege in addition to the privilege given to other shippers, that it would give you an advantage?

4998 A. No, we split on a rate.

Q. But he offered you the same rates the other shippers got? A. That had nothing to do with it. The whole question came up as to whether they would make an addition to the conference agreement permitting the chartering or agreeing to allow the chartering of certain steamers specified by the clause, and another steamer at a fixed rate. Now, we split on that rate. It had been open to everybody in the conference as well as ourselves. We did not ask for any advantage and when we tendered them coffee we did not ask for the advantage every man in the conference had

4999 when we tendered our shipment. Other people had a rebate and we did not. Our mark, was, if there is any mark, chartering vessels outside of the Lamport & Holt for business outside of them, and Mr. Daniels has already, and the evidence amplifies my testimony, was ready to meet us. We did not agree on the rates. We offered him 25c, he said 35; it was our opinion he would have agreed at 30 and we would not take it, and he would not take 35, and the whole thing dropped. Everybody else would have done it. I was cross-examined very fully as to the point of

5000 other shippers and I named five other shippers who could have availed themselves of a full cargo; in other words, they give in their present conference rates a preference of five per cent. to shippers of 100,000 bags and 10% to shippers of 200,000 bags. We wanted a preference inserted in the agreement, a special basis for shippers of a full cargo.

MR. MONTGOMERY: Coffee cargo only?

THE WITNESS: Coffee cargo only, and everything else to be on the previous terms. There was where we split.

Q. And that was you proposed an advantage to your 5001
firm and would have been used by about five other shippers in the trade? A. Five other shippers that I named who could take advantage of the same thing.

Q. You named all you could think of, didn't you? A; No; there are others that might be named.

Q. And that would have given those five or whatever number you can now name, an advantage over the smaller shippers? A. On the same basis that a shipper now of 200,000 bags gets an advantage over a shipper of 100,000 bags. Exactly the same principle in conference. 5002

Q. That is your characterization of it? A. That is a fact.

Q. It would have given you the advantage I have spoken of? A. It would have given the five shippers the advantage that anyone who would not or could not ship the cargo would not have, and it is exactly on the same basis——

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Humphrey, have you had any communication of any kind whatsoever from Brazil apprising you at or about the time, or at the time, of the receipt of this letter, Exhibit 5003
186, that Mr. Cook had been in Brazil and had made any offer or had any conversation with any of your representatives there? A. No.

MR. KIRLIN: Object to it as incompetent and immaterial.

Q. I notice it is stated here it has been argued—to read from Mr. Cook's letter, Exhibit 186—"It has been argued that we might give you the facility of shipping small parcels by the regular lines, whilst you retained your rights 5004
to charter for the bulk of your business, but I would ask you how long it would be under these circumstances before we had similar demands made upon us by other of our friends who are now perfectly satisfied. Of course, you know the whole of the coffee freighting is now done under special contract with the shippers in Brazil, and I cannot imagine that there can possibly be anything illegal in this as has been suggested to us by you or your people from time to time." Do you know the source of that suggestion of anything being illegal in it; do you know what he refers to there? A. I don't know what he refers to specifically. As I say, that letter is a resume of a whole lot that happened and he is expressing it to Mr. Arbuckle.

5005 Q. That is his view of it? A. His view of it. His view expressed to Mr. Arbuckle.

Q. Now, is it true that all of the coffee business from Brazil is under special contract; is it carried on in that way? I will read again: "Of course, you know that the whole of the coffee freighting is now done under special contract with the shippers in Brazil." A. None of Arbuckle's itself is.

Q. Then that don't apply to—— A. That does not apply to our business.

5006 Q. So when he uses that term it applies to others than yourselves? A. When he uses that term it applies to others than ourselves.

Q. Do you know whether or not all the balance of the coffee freighting business in Brazil is under contract? A. Very much of it is. I don't know that it all is.

Q. With the conference lines? A. Yes, with the conference lines. The great bulk of it is outside of Arbuckle Brothers.

Q. Now, these large shippers you have mentioned to Mr. Daniels, who would be in a position to charter for full
5007 cargo, you mentioned a number—— A. Yes, I mentioned a number.

Q. Now, wouldn't those shippers that you mentioned in connection with yourselves practically embrace about all the coffee shippers from Brazil to New York? A. No, there would be others besides them.

Q. Would they be a large or small percentage of the coffee trade? A. It would be a small percentage of the total shipments.

Q. That is what I mean. I am speaking of the volume of
5008 the business? A. Yes.

Q. Did you ever ask the conference, or Mr. Daniels, or any one of the conferees, to allow you to ship by chartered steamers and to withhold that privilege from other shippers? A. We did not.

By Mr. Montgomery:

Q. You testified in response to a question by Mr. Kirlin that you sometimes carried cost and freight shipments for shippers other than yourselves and on your chartered vessels? A. Where we had made the cost and freight sale only.

Q. Yes, and to both New Orleans and New York, or only to New Orleans? A. Both.

Q. You do a cost and freight business to New York too? 5009
A. Yes.

Q. Does it frequently happen in the New York business? A. No, but the question of sailing the vessels, the steamers, whether entirely convenient to us, to load a full cargo, and the time of sailing may not be convenient for the people who want to buy cost and freight. It is generally a small shipper who wants to buy——

Q. As to New Orleans, that would be, would it not, the only method by which you could get the cost and freight order under the existing position of the conference? A. I 5010
have so testified, yes.

By Mr. Baldwin:

Q. I forgot to ask one question. Now, Mr. Humphrey, as a merchant is it to your interest to get as low a rate as possible for your coffee? A. We think so, or I think so.

Q. There cannot be much doubt about that, can there? A. No.

Q. And it is likewise to the interest of the consumer to get as low a rate as possible? A. Yes.
5011

By Mr. Kirlin.

Q. You are both shipper and consumer as far as your coffee is concerned, aren't you? A. Not on cost and freight business.

Q. You said that was a small part of your business? A. Yes.

Q. But the main part of your business is the shipment of your own coffee? A. Our own coffee.

By Mr. Baldwin. 5012

Q. And in selling your coffee to the public you would get the benefit of whatever reduction in rate you could possibly make? A. Naturally.

Hearing adjourned to Friday, June 27th, 1913, at 10:30 o'clock A. M.

5013 New York, June 27, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.
MESSRS. BURLINGHAM, MONTGOMERY & BEECHER.
By Charles Burlingham, Esq., and Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*
MESSRS. CONVEES & KIRLIN.
5014 By J. Parker Kirlin, Esq., and M. W. Maclay, Jr., Esq., for Prince Line, *et al.*
MESSRS. SPOONER & COTTON.
By J. C. Spooner, Esq., for Paul Gottheil, *et al.*

It having been expected to examine Mr. Jamison, and Mr. Jamison having another engagement in Court, it was consented that the hearing be adjourned until Tuesday, July 1, 1913, at 10:30 A. M.

5015 NEW YORK, July 1, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.
MESSRS. BURLINGHAM, MONTGOMERY & BEECHER.
By Charles Burlingham, Esq., and Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*
MESSRS. CONVEES & KIRLIN.
5016 By J. Parker Kirlin, Esq., and M. W. Maclay, Jr., Esq., for Prince Line, *et al.*
MESSRS. SPOONER & COTTON.
By J. C. Spooner, Esq., for Paul Gottheil, *et al.*

THOMAS A. SPARKS, recalled.

DIRECT EXAMINATION continued by Mr. Montgomery.

Q. Mr. Sparks, you are here in response to a subpoena calling on your office to produce a full and complete copy of the freight manifests covering all shipments made in each and every ship despatched by the Hamburg-American Line and the Hamburg-American Line joint service—

the Hamburg-South American Line that should be I pre- 5017
sume—joint service from New York to ports in Brazil during the period from February 14th, 1908, and ending December 31, 1912; to what extent have you been able to comply with that subpoena? A. I have got all of them from 1908 to 1912 inclusive, except the manifests covering the voyages of the S. S. *Corrientes,* July 1st, 1908, and the S. S. *Siegmund,* July 15th, of the same year and these are the manifests. (Producing.)

Q. Do I understand that every steamer that sailed within this period by your lines with the exception of two 5018
you produce the manifests for that time? A. About Brazil lines, yes.

MR. MONTGOMERY: I ask to have these marked for identification.

Brazil service manifest and freight list for 1909 as follows: S.S. "*Corrientes,*" Jan. 9th; "*Siegmund,*" Feb. 10th; "*Gunther,*" March 10th; "*Sieglinde,*" April 10th; "*Siegmund,*" May 10th; "*Corrientes,*" June 3rd; "*Desterro,*" June 10th; "*Galicia,*" July 10th; "*Ripley,*" Aug. 14th; "*Des-* 5019
*terro,*" Sept. 10th; "*Corrientes,*" Oct. 9th; "*Galicia,*" Nov. 10th; "*Desterro,*" Dec. 10th.

Marked Petitioner's Exhibit 254 for identification.

Brazil service manifest and freight list for 1908 as follows: S.S. "*Gunther,*" Feb. 1st; "*Sieglinde,*" Feb. 15th; "*Christiania,*" Feb. 29th; "*Gutrune,*" March 14th; "*Corrientes,*" April 1st; "*Siegmund,*" April 15th; "*Gunther,*" May 1st; "*Sieglinde,*" May 15th; "*Christiania,*" June 1st; "*Gut-* 5020
*rune,*" June 15th; "*Gunther,*" Aug. 20th; "*Siegline,*" Sept. 1st; "*Corrientes,*" Sept. 25th; "*Gunther,*" Nov. 25th; "*Sieglinde,*" Dec. 24th. (Missing *Corrientes,* July 1/08; *Siegmund,* July July 15/08.)

Marked Petitioner's Exhibit 255 for identification.

Brazil service manifest and freight list for 1910 as follows: S.S. "*Corrientes,*" Jan. 12th; "*Galicia,*" Feb. 11th; "*St. Oswald,*" April 1st; "*St. Johann,*" April 12th; "*Corrientes,*" May 5th;

5021 "*Desterro,*" May 10th; "*Galicia,*" May 25th; "*Woglinde,*" June 24th; "*Oppurg,*" July 12th; "*Desterro,*" Aug 10th; "*Westlands,*" Aug 25th; "*Galicia,*" Sept. 13th; "*Ince Bank,*" Sept 26th; "*Woglinde,*" Oct. 22nd; "*Oppurg,*" Nov. 10th; "*Chatham,*" Dec. 10th.

Marked Petitioner's Exhibit 256 for identification.

Brazil service manifest and freight list for 1911 as follows: S.S. "*Galicia,*" Jan. 14th; S.S. "*Woglinde,*" Feb. 18th; S.S. "*Oppurg,*" March 10th; S.S. "*Nassovia,*" April 13th; S.S. "*Ince Bank,*" May 16th; S.S. "*Woglinde,*" June 18th; S.S. "*Overdale,*" July 14th; S.S. "*Nassovia,*" Aug. 17th; S.S. "*Wellgunde,*" Sept. 14th; S.S. "*Crossby,*" Sept. 30th; S.S. "*Woglinde,*" Oct. 16th; S.S. "*Overdale,*" Nov. 20th; S.S. "*Nassovia,*" Dec. 13th.

5022

Marked Petitioner's Exhibit 257 for identification.

5023 Brazil service manifest and freight list for 1912 as follows: S.S. "*Wellgunde,*" Jan. 11th; "*Crossby,*" Jan. 27th; "*Woglinde,*" Feb. 17th; "*Theodor Wille,*" March 15th; "*Santa Anna,*" April 4th; "*Lord Sefton,*" April 13th; "*Nassovia,*" May 8th; "*Wellgunde,*" May 24th; "*Numantia,*" June 8th; "*Woglinde,*" June 15th; "*Santa Ursula,*" July 13th; "*Santa Rosa,*" August 16th; "*Nassovia,*" Sept. 6th; "*Wellgunde,*" Sept. 15th; "*Santa Theresa,*" Sept. 26th; "*Woglinde,*" Oct. 11th; "*Numantia,*" Nov. 15th; "*Santa Ursula,*" Dec. 17th.

5024 Marked Petitioner's Exhibit 258 for identification.

Q. You haven't any idea where the manifests of those two steamers are, have you? A. I have no idea.

Q. You think they are probably lost? A. Yes, I am surprised there are any of the year 1908.

WILLIAM G. SICKEL, recalled. 5025

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Sickel, I notice that the Hamburg-American Line has put on to Brazil some new steamers, hasn't it? A. You refer to the *Santa Rosa* and *Santa Ursula* class of steamers?

Q. I don't know what the names of them are; steamers carrying freight from here to Brazil; you have some new ones, haven't you, that were very recently put on there? A. Not that I know of. The Santa class of steamers has been in the service for a year or more. Those are the ones that 5026 we designate as new steamers.

Q. You have some new steamers that have passenger accommodations, haven't you, in that service? A. The *Sieglinde* that sailed from here on the 25th of June has passenger accommodations.

Q. Is that a new boat? A. No, it is a very old boat. She was running in the service at its inception.

Q. Haven't you some new motor boats that have passenger accommodations? A. The *Christain X* is scheduled to sail from here July 10th, and has accommodations for 5027 about twenty passengers.

Q. Aren't there other new motor boats that have passenger accommodations? A. There is another motor boat, the *Monte Tenedo,* but she has never been here before, and I am not sure whether she has passenger accommodations or not. My impression is that she has not.

Q. Weren't some of these boats built for this trade? A. No, sir; some of these two boats you mean?

Q. Yes, any of these two boats? A. No. The *Christain X* belongs to the Hamburg-American Line and the *Monte* 5028 *Tenedo* belongs to the Hamburg-South American Line. I know the *Christain X* was not built for the trade.

Q. But you don't know about the other? A. The other I don't know, because she belongs to the other company.

Q. Do you know how many boats there are running now in the trade from New York to Brazil belong to the Hamburg-American and Hamburg-South American Lines that have passenger accommodations? A. The service is constantly changing. The only two that I know of at the moment are the *Sieglinde* and the *Christain X,* and their accommodations are very small.

Q. Do the Hamburg-American Line or the Hamburg-

5029 South American Line carry any passengers to Brazil? A. They do not.

Q. Why not? A. There is no dependence that these steamers will stay in this trade continuously; besides, they are wholly outclassed by our competitors.

Q. What competitors have you in mind? A. The Lamport & Holt.

Q. You mean that as passenger steamers they would have difficulty in competing with the Lamport & Holt? A. That is what I had in mind when I made that statement.

5030 Q. Is that the only reason? A. The only reason that I know of.

Q. The Hamburg-American Line does a large and successful passenger business in a number of other areas as I understand it? A. They do.

Q. Is there by chance any agreement with the Lamport & Holt Line or with anybody else which precludes you from carrying passengers in this area? A. Not to my knowledge.

Q. Never heard of one? A. Never heard of any agreement that would prohibit our carrying passengers to Brazil.

5031 Q. Or from Brazil to New York? A. Or from Brazil to New York.

Q. You were asked, I think, when you were here before, Mr. Sickel, as to whether as the result of two tramp steamers sailing from Philadelphia to Rio on March 26th, and July 27th, respectively, in 1911, the rates charged from New York to Rio on any commodity by your line were affected in any way; have you looked that up? A. I have not, but I will.

MR. BALDWIN: And give us the figures?

5032 THE WITNESS: As many as I can get.

PAUL F. GERHARD, recalled.

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Gerhard, as the agent of the Prince Line did you ever solicit freight moving from Brazil to New York from Arbuckle Brothers? A. No, sir. I have not solicited freight from Arbuckle Brothers. I have simply——

MR. KIRLIN: Wait a minute; that answers the question.

Q. Do you recall—you know Mr. Humphrey of Arbuckle 5033
Brothers? A. Yes.

Q. Don't you recall, Mr. Gerhard, that sometime in 1910 you went to Arbuckle Brothers' office and had a conversation with Mr. Humphrey? A. Yes, sir.

Q. What was that about? A. It was at the time when the Prince Line were getting the new steamers into the service, and I made calls amongst many of the coffee importers to call their attention to the new steamers the Prince Line was furnishing, and to the good deliveries these steamers are making of the coffee, and I requested the various mer- 5034
chants to write out to their friends in Brazil recommending to ship by the Prince Line, and one of these circular calls I made amongst the coffee trade and also called on Arbuckle Brothers and made the same request.

Q. That is of Mr. Humphrey? A. Yes, I recollect speaking to Mr. Humphrey.

Q. That is, you wanted them to patronize your line? A. Patronize the line. Simply write out and recommend shipping by the Prince Line.

Q. What did Mr. Humphrey say about that? A. It is so long ago I do not recollect the exact—— I did not get 5035
much encouragement from Mr. Humphrey, and the result is I did not call again.

Q. Did he express reluctance to ship by your line; he did not think it was a good line or anything? A. No, I don't recollect anything of that kind.

Q. As a matter of fact, Mr. Gerhard, did Mr. Humphrey tell you that it was not possible for him to ship by your line for the reason that your line refused to carry their cargo? A. Well, I have such a faint recollection, it is so long ago, that I cannot possibly state just what the 5036
conversation was, but I do know I was discouraged and never went there again.

Q. But you don't know whether—you would not say that that was not the gist of the conversation? A. I do not recollect the conversation.

Q. After this conversation with Mr. Humphrey, did you take up with your principals the subject that was discussed between Mr. Humphrey and yourself in regard to their shipments? A. I did mention the fact to my principals.

Q. What way, Mr. Gerhard, in a conversation? A. I wrote them and stated that I found Mr. Humphrey ex-

5037 pressed dissatisfaction or disappointment with the Prince Line in refusing to carry their cargo.

Q. That was shortly after this conversation, was it? A. That was shortly after this conversation.

Q. Do you remember about the date; was it along in the summer? A. I think it was along that time, yes.

Q. Have you a copy of that letter in your possession or in your office? A. I have, yes.

Q. Did they ever make reply to it? A. They simply acknowledged receipt of it, but made no reply to it and no
5038 comment on it.

Q. Could you produce a copy of your letter and the reply to it or the acknowledgment of receipt? A. Yes.

Q. How long would it take to get that, Mr. Gerhard? A. I have a copy of an extract referring to that right in my pocket.

Q. That is a copy of your letter? A. Yes. (Producing.) I have it right here.

Q. Have you the acknowledgement of receipt? A. No, I have not; the letter simply acknowledges receipt of it. We have your favor of such a date; it was a letter in which I
5039 reported having called upon a number of merchants and they simply expressed satisfaction to know that the line was so favorably spoken of by the merchants, but made no comment to this whatever.

Q. This is an accurate extract from a letter written by you to Mr. James Knott, the manager of the Prince Line, is it? A. Yes, sir.

Q. By whom was the acknowledgement of receipt that you speak of signed, if you remember? A. I do not recollect who signed the acknowledgement of the letter.

5040

MR. MONTGOMERY: I offer this letter in evidence.

MR. KIRLIN: I object to that on the ground that it already appears that the statement of Mr. Humphrey therein referred to is not based upon any knowledge of his own, is hearsay and incompetent. That that letter is also incompetent. I do not object on the ground that you are offering a copy.

MR. BALDWIN: Let it appear that this is an extract taken from a letter which reported other things which are not germane, is that the idea.

MR. KIRLIN: Yes.

Q. This is all that is germane to this subject? A. The only thing in that letter that is germane to this subject. 5041

Letter marked Petitioner's Exhibit 259.

Q. And all that you have ever received from Mr. Knott or from the Prince Line on this subject is a mere acknowledgment of receipt of this letter? A. Of that general letter of which this is a part.

Q. And nothing was ever done afterward? A. No, sir.

Q. You have never had any conversation with Mr. Knott about it? A. No, sir, not to my recollection. 5042

Q. Has Mr. Knott or anybody connected with the Prince Line ever said to you or given you, any reason to believe that the facts set out as having been told you by Mr. Humphrey are not accurate?

MR. KIRLIN: I object to that as leading and incompetent and asking for a conclusion.

MR. KIRLIN: You have not heard any more from them?

THE WITNESS: No more; nothing from them. 5043

CROSS-EXAMINATION by Mr. Kirlin.

Q. Mr. Gerhard, Mr. Humphrey testified that in this conversation you offered him room for coffee; was that true? A. No, sir.

Q. Did you have any authority to book coffee or to engage room?

MR. MONTGOMERY: Are you quite right about that, Mr. Kirlin.

MR. KIRLIN: Yes, I asked him about that and saw the question. 5044

MR. MONTGOMERY: You mean specific room?

MR. KIRLIN: Yes.

MR. MONTGOMERY: I don't think you understood him.

MR. KIRLIN: On page 2107: "Q. What room did he tender you? A. He said he had it and wanted us to fill up the room; wanted to know whether we could not give him something to fill his vessel."

THE WITNESS: I never offered any room.

5045 Q. Had you any authority to offer him room? A. No authority whatever.

MR. BALDWIN: I object to that.

MR. MONTGOMERY: That explains what went before. You asked what he came for and he said he came for coffee to fill up the steamers.

MR. KIRLIN: The next question but one——

MR. MONTGOMERY: The next question has to be construed in connection with that.

5046 Q. Did you ask for coffee to fill up his steamers? A. No, sir.

Q. You told us what you did say? A. I simply asked him to write out to his friends in Rio recommending to ship by the Prince Line.

MR. BALDWIN: Repeat that a[illegible]?

THE WITNESS: I simply a[illegible]m to write to his friends in Brazil recomm[illegible] ship by the Prince Line, that is all.

5047 Q. Have you any knowledge [illegible]t room was engaged on any of the steamers? A. I h[illegible] no knowledge of what room is available, nor even freight rates at the time.

Q. It would not be practical for you to make any such arrangement? A. No.

Q. Or to make any such offer? A. I did not make any such offer.

MR. BALDWIN: I object to that.

Q. I mean practical in the business sense? A. No, sir.

5048 I did not know what room there was in the steamer and what question of rates was ruling.

MR. BALDWIN: I object to that.

Q. Look at this Exhibit 248, which Mr. Humphrey produced, and state what that is?

MR. BALDWIN: I object to that; it states on its face what it is.

A. This is simply a circular letter which we issued periodically, and announced to the coffee trade of steamers of the Prince Line that are scheduled to lead coffee at

Santos and Rio de Janeiro for New Orleans and New 5049
York. We issue those whenever we get advices from the home office sending us a schedule and we issue the circulars.

Q. Do you issue them to the trade generally? A. To the trade generally.

Q. It was not specially to Arbuckle? A. No. You will observe this is a hektograph, with different ink on top showing it is a circular letter.

Q. And the letter, Exhibit 251, is that a similar circular letter sent to all the coffee importers? A. Yes. That is 5050
a similar circular letter sent to most of the coffee importers.

Q. Then you remember receiving from him a letter, Exhibit 249 and replying with Exhibit 250? A. I do, sir.

Q. And receiving the letter, Exhibit 252 and letter Exhibit 253; do you remember those letters? A. Yes, I recollect those letters.

Q. You told him there that you had no authority? A. I told him distinctly there that I had no authority to act.

MR. BALDWIN: Who told who? 5051

THE WITNESS: I said in those letters I had no authority to engage coffee.

MR. BALDWIN: I object to what it states about authority; it is stated in the letter and I ask to have it stricken out.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Now, Mr. Gerhard, have you any independent recollection of the sending out of Exhibits 248 and 251? A. In what way a recollection? 5052

Q. Have you any independent recollection at all of the sending out which you characterize as simply being a sort of circular letter, that is sent to the trade? A. I don't understand your question.

Q. Read it again and perhaps you will. (Question read.) That is, Exhibits 248 and 251; you remember them, Mr. Gerhard? A. I have a recollection of sending them out and getting a reply. Those are very vividly impressed on my mind.

Q. At that time? A. At that time, yes.

Q. You sent them generally to the trade? A. Yes.

5053 Q. And of that you have a definite recollection, of these having been sent to Arbuckle Brothers? A. Yes.

Q. You did not send them yourself? A. I told my clerk to send them in the regular way; he has a list of the men to send these to.

Q. I am asking you about yourself? A. No, I did not send them.

Q. I see they appear to be dictated in both instances by H. C. a hyphen and then, H. J. J. without anything that indicates they were not even dictated or transcribed or in any way went through your hands, doesn't it? A. I don't
5054 know that they actually went through my hands, but they are made by my instructions and sent to the trade.

Q. Still that does not answer my question. I asked you the question if the initials in the corner of these two exhibits do not indicate that you personally did not either dictate, transcribe or have anything to do directly with the sending of them? A. Yes, it would so indicate.

Q. And you are accustomed to send out these circulars frequently? A. At regular intervals; we do it now.

Q. And you send out a great many I suppose? A. Yes.

5055 Q. And in 1910? A. Yes.

Q. And yet you say you have an independent recollection of these two circulars going to Arbuckle Brothers? A. I have a very vivid recollection of the incident with Arbuckle Brothers, a very vivid recollection of it.

Q. I did not ask you for that; I asked you whether you have any independent recollection of those two exhibits, numbers 248 and 251, being sent to Arbuckle Brothers, Mr. Gerhard? A. The vivid recollection is furnished to me by the replies I received from Arbuckle Brothers.

Q. Independently of the reply, Exhibit 249 of September
5056 24th, or the day after, Exhibit 248 was sent, you have no recollection at all of having selected or had in any way one of these circulars sent to Arbuckle Brothers? A. No, I have not. I gave no special instructions to send to Arbuckle Brothers.

Q. That is what I am trying to get to. It was not a part of your intention to have them sent then to Arbuckle Brothers, was it? A. Arbuckle's name is on the list of coffee importers and the clerk is simply instructed to send that circular letter out to the coffee importers as per list.

Q. How long was it after these circulars were sent out,

particularly the one of September 23rd, that you went to 5057
see Mr. Humphrey? A. I do not recollect, sir.

Q. You have a pretty distinct recollection about the Arbuckle incident, but you do not recollect when you went to see him? A. Not the time, no, sir.

Q. Could you say whether it was shortly after the circular letter was sent or not, or was it shortly after the—well, this circular letter of September 23rd, do you know whether shortly after that or not? A. I do not.

Q. You do have a recollection of having received the answer of Arbuckle Brothers on September 24th, in which 5058
they asked you to book 5,000 bags of Santos coffee on the *Spanish Prince*; you recollect that, don't you A. Simply by looking over the correspondence. Not otherwise, I have not recollected it.

Q. Your memory was refreshed when you saw this correspondence? A. Yes.

Q. And then did it recall to your mind that you had received the letter in response to one of those circulars? A. Yes.

Q. Now, what, if anything, did you do with reference to
booking 5,000 bags or making an offer to book 5,000 bags 5059
of coffee on the *Spanish Prince* engaged to sail on the 30th? A. I stated in reply I had no authority to book any coffee and referred them to the Prince Line agents in Brazil.

Q. Outside of that letter you made no attempt at all? A. No attempt at all.

Q. Now, are you prepared to say that it was before or after you received this letter, Exhibit 249 from Arbuckle, under date of September 24th, that you had the talk with
Mr. Humphrey? A. The exhibit on record gives you the 5060
date when I had the talk with Mr. Humphrey. I do not recollect the date, but you have it right before you. You have all the letters before you.

Q. Your letter which you wrote to your principals, James Knott, was under date of July 15th, 1910, so therefore, it was before? A. Yes, of course, it shows it.

Q. Had you sent out circular letters of the same character to Arbuckles in July? A. I do not recollect.

Q. You do not recollect that? A. I don't recollect it. Except they got it in the regular way.

Q. Do you recall whether or not you sent the trade gen-

5061 erally in July letters of that nature? A. I don't know it.

Q. In the general course of business you would assume that you did? A. Yes.

Q. What was it that occasioned your visit to Mr. Humphrey? A. I have already explained. This is the time when the Prince Line was putting new steamers in the service and I went to all the principal coffee importers and called their attention to the new steamers and the good delivery of coffee we were making, and requested them to write to their friends in Brazil recommending to

5062 ship by the Prince Line.

Q. And you said to Mr. Humphrey in substance that you wanted him to write to his friends in Brazil to see if he could not ship coffee over in the new steamers, is that right? A. Yes.

Q. What friends did you have in mind that he had there, his own house? A. I presume he had his own house there; I don't know exactly how they do their business.

Q. You knew that Arbuckle Brothers' main office was here in New York, didn't you? A. Yes.

5063 Q. You know they had been large and important shippers of coffee for a long time? A. Yes.

Q. And yet you went to Mr. Humphrey solely to call his attention to the fact that you had on these new steamers and to use his good offices with his friends in Brazil to ship on the new steamers? A. Yes, that is it.

Q. And that is all you said to him? A. That is all I said.

Q. And, although Mr. Humphrey has testified under oath here that you came to him and asked for coffee to fill up your ship on these lines, asked him not to write to Brazil, but asked him, you say that is not true? A. I made

5064 no such statement.

Q. You made no such statement? A. No, I could not ask him.

Q. What do you mean by this answer to Mr. Montgomery's question a while ago, when you said that you did not recollect that conversation? A. I don't recollect the exact conversation. I refreshed my memory with a letter that I wrote him.

Q. Well, it seems that in this letter that you wrote him that he must have said pretty definitely that the conference lines actually declined to receive his coffee, even at full current freight rates, so he must have said that then?

A. I suppose he did, but it is only from what I seen in 5065
the letters I got. I did not recollect it.

Q. Do you now recall the fact that he said that? A. Only as I have written it to the home office. I do not have to recollect it. I only refer to my letter which I take for granted were the facts, as they were the result of the conference.

Q. If you only refer to the letter and you have no independent recollection of that conversation why did you say with absolutely certainty that you did not say to Mr. Humphrey in effect that you did not tender him room or 5066
ask for coffee to fill your steamers? A. For the simple reason I have no authority to tender room; I have no authority to book any coffee; I don't know anything about the freight rates ruling; I don't know what room is available, and I am in no position whatever at this end to book coffee and never had authority.

Q. But you had enough knowledge of the situation down there that you were eager to have the Arbuckles write to their friends or Humphrey to write to his friends there, to secure space on the steamer, did you? A. Yes, I simply 5067
asked them to recommend our steamers to such friends in Brazil.

Q. Why would you ask him to recommend instead of asking him to direct? This is the home office? A. It did not enter my mind whether the instructions are given at this end or at the other end; I simply went to him with the same idea in my mind as I went to all the other merchants in New York City.

Q. In view of your indistinct recollection of what happened, or what you said at this conference, and in view of 5068
what you now have said, that you could not have stated to him anything with reference to securing room or booking coffee because you had no authority, are you prepared to say that you did not in substance say this to him; that you had steamers at Santos, that they needed coffee cargo and wanted to know whether you, meaning Arbuckles, could give them some? A. I made no such remark.

Q. Are you prepared to say here under oath in view of the fact that you have already avowed that you have no distinct recollection, that you did not say that to Mr. Humphrey? A. Yes, I did not say it.

5069 Q. Then Mr. Humphrey has perjured himself here, is that the idea? A. I cannot help it, I did not say it.

MR. KIRLIN: I do not think that is a proper question to direct to the witness; it is not for Mr. Gerhard to characterize the testimony of Mr. Humphrey.

Q. You knew Mr. Humphrey, didn't you? A. Only as I went into that office. I don't think I had met him before.

Q. You knew of him? A. I suppose I did.

5070 Q. Did you enquire for him when you went there? A. No, I did not. It is the first gentleman as far as I recollect when I came into the office that I spoke to, and I broached the subject to, the object of my call.

Q. Was anything said in this conversation about their having copies of any circulars or letters? A. No, sir.

Q. Why was it that you said this in your letter to Mr. Knott: "They claim to have in their possession copies of circulars issued by the conference lines, and copies of contracts made with coffee shippers in Brazil"? A. That

5071 is what he claims.

Q. I asked you a moment ago whether anything of that sort was said in this conference and you said no? A. I beg your pardon.

Q. (Question read.) A. You are referring to the circulars I had issued?

Q. I did not at all? A. That is what I understood.

Q. Now, you want to put on the record you do not understand my question? A. What is the question again, please?

5072 Q. (Question read.) Issued by the conference lines; did he say anything of that kind? A. I cannot get that. My mind was on my own circular letters that I had issued, and they were not mentioned at that conversation and I answered no.

Q. I did not ask you that? A. Then I did not understand the question.

Q. Then you have a right to say you do not understand the question. I put the question again: in this conversation you had with Mr. Humphrey did he say anything about having in his possession copies of circulars or contracts issued by the conference lines in Brazil to coffee shippers? A. I only recollect what I wrote the home

office. I have no definite recollection otherwise of that con- 5073
versation.

Q. Now then, outside of what is contained in Exhibit 259, you have no recollection of what was said there? A. No, sir, but I can state most positively that I made no offer of room to him, because I had no authority to make any such offers.

Q. Did you make any suggestion to him—did he say to you, why, Mr. Gerhard, you would not take our coffee on any terms; did he say that? A. I don't recollect that.

Q. You would not swear that he did not, would you? A. 5074
I say I do not recollect it.

Q. You put in this letter to Mr. Knott, Exhibit 259, that the conference lines actually decline to receive any coffee shipments from them even at full current freight rate; in view of that he must have said something like that to you? A. No doubt he did.

Q. What is that? A. Yes.

Q. Then do you mean to say that you have no recollection that he said, why, you would not take our coffee on any terms? A. I do not recollect that except what I have 5075
written there. I have only refreshed my memory by reading the letter again. That is the only way.

Q. Did he also say that he had also other information which would cause the conference lines more trouble with the Government if he chose to press their claims, did he say that? A. I have no recollection, except what you find in the letter, and I have only refreshed my memory by reading from the letter to the home office.

Q. Do you mean to say that this letter was written by you on the meagre request by you to him that he should confer with his friends in Brazil—— A. How is that? 5076

Q. I will put it a little plainer. Do you mean to say that this letter, Exhibit 259, which is your letter to Mr. Knott, was written after your conversation with Mr. Humphrey, and that all that you said to Mr. Humphrey was, we would like you to take the matter up with your friends in Brazil to see if they could not ship on the line, that is all that was said? A. That is all as I recollect it.

Q. And that is in answer to this request to communicate with friends, and he said to you, why, you people won't take our freight at any rate——

MR. KIRLIN: He has not said that.

5077 Q. The conference lines refuse to take the freight? A. According to my letter I don't recollect, except what is in the letter. I might say—I am so certain about it because I have no authority to book coffee here; never had authority and never had——

Q. Did you have authority to go and solicit business at all?

MR. KIRLIN: Don't interrupt his answer.

MR. BALDWIN: I don't know if I cannot interrupt an answer if it is not responsive to my question.

5078 Read the answer again.

(Answer read.)

A. (Continuing.) I never exceed authority vested in me.

Q. Up to that time and for a considerable time prior thereto the Arbuckles had not been shipping on your line, had they? A. I didn't know it.

Q. You didn't know it? A. I hadn't noticed it, no, sir.

Q. You did not know that the Arbuckles were not shipping on your line? A. I had not noticed it, no, sir.

5079 Q. You knew they were very considerable shippers, didn't you? A. I knew they were shippers, yes.

Q. Then if you did not know that they were not, why did you go to him to talk about these shipments at all, if he was a regular customer? A. I have already explained I went in a general way to the trade calling the attention to the new steamers and requesting them to write to their friends in Brazil to ship by the lines, and I only went to him, as I went to all of the other merchants in the trade; no other way.

5080 Q. And went to him under the impression that they were shipping over your line? A. Yes, and his remarks greatly surprised me.

Q. And you are the head of the firm? A. Yes.

Q. And yet you did not know that they were not shipping over the conference lines? A. Did not know it. His remarks greatly surprised me.

Q. Did you look up to ascertain whether his statement was true that the conference lines actually declined to receive their coffee shipments? A. I did nothing further than you have before you.

Q. You did not talk with any of your conferees here, did you, about it? A. No, sir.

Q. Now, when you sent out the circular on October 22nd, 5081
or it was sent out from your office generally to shippers, being Exhibit 251, do you recall receiving answers from the Arbuckles on September 24th, a few days afterwards? A. I recollect the answer, yes.

Q. Where they said, please book 5,000 bags Santos coffee per *Spanish Prince*; do you remember that? A. I remember the letter.

Q. You remember receiving it? A. Yes, I remember receiving the letter.

Q. What did you do with that letter? A. You have my 5082
answer before you.

Q. I don't see any answer to the one of October 24th. Maybe it is here.

MR. KIRLIN: There are answers to both.

THE WITNESS: There is a copy of my letter (producing).

Q. Your answer to their communication of the 23rd was that you referred them to your Prince Line agents in Brazil? A. Yes, sir. 5083

MR. KIRLIN: And also that he had no authority here.

MR. BALDWIN: The letter speaks for itself.

Q. You did not communicate yourself with the agents in Brazil about their tender, did you? A. No, sir.

Q. You just simply referred them? A. Simply referred them.

Q. And in view of the fact that you were very much 5084
surprised by Mr. Humphrey's statement that the conference lines would not take their freight, and in view of the fact that you communicated that to Mr. Knott, and only got a bare acknowledgment of the receipt of it, you did nothing afterwards at all to ascertain the truth of it, or do anything about pressing it? A. Did nothing at all about it.

Q. Did you report it at all to any of the conference meetings that you had here in New York? A. No, sir.

Q. And discussed it with no persons? A. No.

5085 RE-CROSS EXAMINATION by Mr. Kirlin:

Q. Is coffee the subject of talk at the conference here? A. No. we never talk about coffee here.

By Mr. Baldwin:

Q. You never talk about any kicks made by any of the shippers or prospective shippers? A. We never discuss coffee at the meetings.

Q. I did not ask you that; any kicks at all, did you discuss them? A. What is the question?

5086 Q. (Question read.) A. No, sir.

WILLIAM A. JAMISON, recalled for cross-examination. (Continued from page 965):

CROSS-EXAMINATION by Mr. Burlingham:

Q. You remember, Mr. Jamison, when you were here before, that I asked you about your shipments by the Lamport & Holt Line; do you recall when you ceased to ship by
5087 that line? A. I do not.

Q. For how many years did you ship by that line? A. A good many, I could not tell you exactly.

Q. While you were connected with the firm in some way? A. Yes, sir.

Q. Did you ship by the Prince Line too A. I have no recollection of it.

Q. Or by the Hamburg-American Line? A. I have no recollection of that.

Q. You said the other day that it was ten or twelve years
5088 ago that you ceased to ship by the Lamport & Holt Line; can you not fix it in some way? A. No, I have no way of fixing it.

Q. And when you ceased shipping by that line how did you ship your coffee from Brazil here?

MR. BALDWIN: Object to that as immaterial.

A. My recollection is that we shipped by chartered steamers at that time.

Q. A letter has been put in evidence, Petitioner's Exhibit 246, from your firm to Mr. Montgomery here pres-

ent, dated February 21, 1913, which gives the shipments 5089
that you made by chartered boats, and the shipments you made by the Lloyd Brazileiro for a number of years from 1908 to 1912. Please look at the paper? A. Yes. (After examining paper.)

Q. I suppose you have records of shipments in previous years? A. Yes, we could probably get them in the office, if you want them.

Q. Did you ship by any other boats except the Lloyd Brazileiro and chartered boats during that period from 1909 down? A. I have no recollection of it. 5090

Q. Why did you stop shipping by the Lamport & Holt twelve years ago, ten or twelve years ago

MR. BALDWIN: I object to that as immaterial and incompetent.

A. Because I imagine we could ship more advantageously by chartered steamers.

Q. The charter market I suppose was very low at that period? A. I was not attending to it at that time; I do not know. 5091

Q. From your knowledge of the business you do know that until about 1910 or 1911 the charter market was very, very low, was it not? A. I could not tell you; I have no knowledge of that.

Q. Have you nothing to do with the chartering business? A. I have not the details. I do not attend to the details at all; I don't know anything about it.

Q. I observe that in the first instance, in 1908, you shipped practically all of your shipments from Brazil to New York by the Lloyd Brazileiro, and in 1909 I think 5092
you shipped only 68,965 bags by chartered boats, but that in 1910 your shipments were as follows: by the Lloyd 160,000 bags, by charter boats 265,000 bags; that would indicate, would it not, that it was more advantageous or cheaper for you to ship by chartered boats in 1910?

MR. BALDWIN: I object to what it indicates unless he knows something about it.

A. That would be the indications.

Q. And when you shipped by the Lamport & Holt, did you also ship by chartered boats in those early days?

MR. BALDWIN: I object to that as immaterial.

5093 A. I could not answer that; I have no knowledge on the subject.

Q. Your records will tell you that I suppose; can you ascertain that for us? A. Yes.

Q. You will, will you? A. I will have somebody here that will do it; somebody will come and testify to that for you.

Q. Who is your freight broker? A. Mr. Smith.

Q. Who is the man in your concern who knows about the chartering of vessels? A. Mr. Humphrey.

5094 Mr. Baldwin: You mean then or now?

Q. Then. Mr. Humphrey was not with you, was he, in those years? A. What time are you talking about now?

Q. When you shipped with the Lamport & Holt Line ten or twelve years ago? A. Mr. Opitz has probably more information than anybody else.

Q. Give his whole name? A. Emil.

Q. What is his address? A. 66 Broadway.

Q. What is his present business? A. I think he is a
5095 clerk, or confidential employe for Mr. Jarvie, who used to be one of our partners.

Q. He was with you at that time? A. Yes.

Q. He would know all about it? A. Yes.

Q. You were in entire control of the business then? A. Yes.

Q. I think you said the other day—I asked you something about discount which you used to get on freight in early times, do you know about that? A. No.

Q. Does Mr. Jarvie know about that? A. Yes.

Q. And Mr. Opitz? A. Doubtless.

5096 Q. But that was the day of special preferential rates for different people, was it?

Mr. Baldwin: I object to that as immaterial and incompetent.

Q. Answer please? A. I don't know anything about it.

Q. When did you take charge of the whole business, so that you know about this matter of chartering or making freight contracts, ever? A. I don't know anything about the chartering or making of freight contracts, the details.

Q. You are the head of the house now? A. Yes. 5097

Q. And have been only since Mr. Arbuckle's death? A. Yes.

Q. Before his death and for a period of four or five years, what were your duties in connection with the firm? A. I was the managing partner.

Q. In a general way you knew everything that went on I suppose? A. Yes.

Q. You have had several conversations with Mr. Daniels, haven't you, on the subject of transportation? A. Only two as I recollect. 5098

Q. What special consideration or terms did you request from Mr. Daniels in these conversations that you recollect?

MR. BALDWIN: I object to the form of the question. You can ask him what was said.

Q. Go ahead and answer please? A. We asked Mr. Daniels to make a—to give us an opportunity to ship or charter in cargo lots.

Q. You mean outside of his line by chartered boats? In your conversation with Mr. Daniels, did you request permission, if you gave them your business, to ship by outside tramp boats? A. I imagine we did. 5099

Q. And did you also request a special rate for cargo lots? A. Yes.

Q. By his line? A. Yes.

Q. Did not Mr. Daniels tell you that his line would treat you precisely as it did all other shippers? A. He may have said that. I have no positive recollection of that statement.

Q. Did he not say he would be glad to do the business of the Arbuckles upon the same terms as all other merchants, shippers of coffee? A. I think he said he would be very glad to do business with us. 5100

Q. That is what he was there for, wasn't it? A. I think so.

Q. To talk over the subject and, if possible, secure your business? A. I think so.

Q. There was no misunderstanding on the part of either of you as to the purpose of the meeting? A. No, I don't think there was.

Q. You must remember, do you not, that Mr. Daniels

5101 said to you positively that his line would be happy to do business with you on the same terms as all others, as with all others?

MR. BALDWIN: I object to the form of your question. I do not think it is at all regular for counsel to say that he must remember. Whether he does or not, you can ask him.

A. I do not remember the latter part of your question. I do remember Mr. Daniels saying he would be very glad
5102 to do business with us, but as to your qualifying remark I do not remember it.

Q. But from your testimony just given it appears that you insisted on certain specified preferential conditions, did you not?

MR. BALDWIN: He did not say that at all, preferential.

A. Do you consider them preferential?

Q. I should say so? A. I would not.

5103 MR. BALDWIN: Do you mean to say that he said—

MR. BURLINGHAM: Oh, somebody said. I am asking what he demanded.

MR. BALDWIN: Your question is objected to because it assumes a fact in his conversation that he has not said anything about, that he wanted any preferential treatment. He did not say anything about that. I object to it.

Q. What you really wanted was to have the right in
5104 your dealings with Lamport & Holt and the conference lines to ship by them when you wanted and to ship by chartered boats when you wanted, isn't that so? A. That is quite right.

Q. What are these chartered boats of yours, tramps, ordinary tramps? A. I believe that is what they are called.

Q. Have you warehouses in Brazil? A. Yes, in Victoria I believe.

Q. You own warehouses? A. Rented.

Q. How long have you had them? A. I could not tell you.

Q. About how long? A. For several years.

Q. How do you store your coffee in other ports in 5105
Brazil, take Rio, for instance? A. I could not tell you the details; I don't know anything about it.

Q. Within your position I want? A. It is public warehouses. I don't know much about the detail of it.

Q. And in Santos? A. I imagine the same thing there.

Q. In the course of your business you do, I suppose, see bills for storage out there, warehouse charges, don't you? A. I never have seen one.

Q. They must come ultimately to this concern, do they not? A. They would not come here. 5106

Q. That is all passed on out there, is it? A. Yes.

Q. How do you account for it that your importations of coffee fell off so considerably in 1909? A. The spot market was probably the cheaper market.

Q. Please explain spot market? A. To be able to purchase coffee right on the spot here either from some coffee merchants or from the Exchange.

MR. BALDWIN: You mean in New York?
THE WITNESS: Yes.

5107

Q. Can you state what your importations are now? A. No.

Q. Or what they were in previous years? A. I could not.

Q. Can you state what proportion of your importations is for your own account and what for others? A. No, I could not give you that.

Q. Can you ascertain what the proportion is? A. Yes.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Jamison, I understand you to say when you tes- 5108
tified on direct that the conversation that you had with Mr. Daniels you did not recollect very well, that Mr. Humphrey noted it down, that is right, isn't it? A. That is true.

Q. And when you state now noted it down, did you make a sort of minute of the conversation? A. That seems to be it.

Q. That is what you meant, wasn't it? A. Yes.

Q. Now, the conversations that you had or held with Mr. Daniels, was there any statement made by you or Mr. Humphrey, or either of you, or both of you, rather, that

5109 you wanted any privilege that they did not allow it anybody else? A. Never said any such thing as that; never said or asked any such thing as that.

Q. As I understand it what you wanted was, you were willing to pay their regular rates for small broken lots, small package freight, with the privilege of chartering for full cargoes at the fixed rate, is that right? A. That is quite right.

Q. And that you wanted to inure to the benefit of anybody; you did not want that to be exclusively to you; you
5110 did not ask that? A. We did not ask that, nor would expect it.

Q. You did not make up Exhibit 246? A. I did not. I don't remember having seen it.

Q. I understood you to say that the freight rates, charter rates, and the conditions that obtained in the coffee trade so far as your house is concerned in this period mentioned by Mr. Burlingham, ten or twelve years ago, you have no personal knowledge of? A. No knowledge of at all.

5111 MR. BALDWIN: On June 9th, 1913, when Mr. Betts was on the stand, he was requested to prepare a statement giving the rates on coffee from each port in Brazil to New York during the years 1907 to 1912 inclusive, and counsel have produced a statement which states the steamer, the date, the port, the bags of coffee and rate per bag, and counsel consent that it goes in evidence as a part of Mr. Betts' testimony without bringing him here.

Marked Petitioner's Exhibit 260.

5112

DAVID COOK, being first sworn, testified as follows:

DIRECT EXAMINATION by Mr. Montgomery:

Q. Where do you reside? A. Montclair, New Jersey.

Q. What is your business? A. Steamship business.

Q. With what firm? A. Busk & Daniels.

Q. How long have you been with them? A. This is my sixth year; I have completed five years.

Q. Do you remember the date that you started with them? A. 1908.

Q. What part of 1908? A. January, 1908. 5113

Q. What is your position there, Mr. Cook? A. I am an employe of Lamport & Holt and also of Busk & Daniels.

Q. You are separately employed by Lamport & Holt and by Busk & Daniels? A. Yes, sir.

Q. What is your position with Lamport & Holt? A. Simply as an employe.

Q. To do what? A. General office work; general office duties.

Q. Here? A. Yes.

Q. General office work in the office of Busk & Daniels? 5114
A. That is right.

Q. And employed, however, and paid by Lamport & Holt direct? A. Not entirely.

Q. That is, one branch of your employment I am getting at? A. Yes.

Q. Now, under your employment for Lamport & Holt just what do you do? A. Simply act as an agent for the line.

Q. Isn't the firm of Busk & Daniels the agent for the Lamport & Holt Line? A. Yes; I am connected with the agency. 5115

Q. Yes, but what are your duties; as I understand you, apart from that agency, you are employed by the Lamport & Holt Line? A. Yes.

Q. And paid directly by the Lamport & Holt? A. Yes.

Q. Not through Busk & Daniels? A. No, through Busk & Daniels.

Q. You have two sorts of employment, haven't you? A. No, only one.

Q. But you are paid partly by Lamport & Holt and partly by Busk & Daniels? A. That is right. 5116

Q. What do you do down there? A. General business of the steamship trade.

Q. Can you make that a little more definite and more particular? A. I don't know quite how to describe it. Answering letters and booking freight and quoting rates.

MR. KIRLIN: And giving evidence when required?

THE WITNESS: Yes.

Q. You attend to some of the correspondence? A. Yes.

5117 Q. Relating to freight matters? A. Yes, sir.

Q. And attending conferences here sometimes of the lines in the Brazil trade? A. Yes.

Q. And solicit freight for the Brazil business? A. No, I do not solicit any freight.

Q. What about the freight that you have to do, about the rates? A. Quoting rates, that is all. When a party calls for a rate.

Q. Would that be for a rate by contract, or enquiry for a contract, or a single shipment? A. Single shipment.

5118 Q. You don't have anything to do with the contracts? A. No.

Q. Do you have anything to do with the books? A. Nothing.

Q. Are you familiar with the rates charged by Lamport Holt? A. Yes.

Q. On contracts and on single shipments? A. Yes.

Q. When and under what circumstances does the Lamport & Holt Line charge primage on their shipments from Brazil? A. They charge primage on all passenger boats.

5119 Q. Only on passenger boats? A. Passenger boats to Brazil, yes.

Q. Always? A. Always.

Q. And always collect it? A. Always collect, yes.

Q. And that is never returned in the form of rebate or otherwise? A. Absolutely no. I ought to add perhaps we do not charge 10% on contract cargo carried by the passenger boats.

Q. On any of it? A. No, I don't think we do on any of it.

5120 Q. Where the contract in terms provides that the shipments—where the contract with the conference lines, or with your line and the shipper, in terms provides that the shipments by the Lamport & Holt Line shall be charged a given rate plus ten per cent. primage, do you not collect here in that case? A. It is our option but I don't think we charge it.

Q. You mean it is optional with you whether you do charge it or not? A. Whether we charge it or not, yes.

Q. For example, you have a contract with the Singer people to carry large shipments of theirs? A. Yes.

Q. Do you know whether you charge them primage? A. I don't think we do.

Q. Could you ascertain from your books? A. Yes, sir. 5121

Q. And let us know. About how many contracts, by the way, are there in force now under which you are carrying cargo to Brazil? A. I should say half a dozen would cover it.

Q. Would it be a fairly easy matter for you to determine from your records when and what instances you have collected primage on those contracts or shipments under those contracts and when not? A. Yes.

Q. Will you do that? A. Yes, sir.

Q. I understand, Mr. Cook, that as a shipper not under 5122
contract tenders a single shipment the invariable rule is that you do collect the primage? A. Yes.

Q. On your own passenger ships only? A. Yes, sir.

Q. How many boats other than passenger boats does Lamport & Holt sail approximately in a year to Brazil? A. We are averaging now 12 a year.

Q. Outside of your passenger boats? A. Yes, sir.

Q. How long has that been going on? A. It is going on for a year I should think now.

Q. And previous to that? A. We did not run any cargo 5123
previous to that.

Q. As I understand then up to a year ago your boats were all passenger steamers going to Brazil? A. Yes.

Q. And that was two a month? A. Two a month.

Q. It is now two passenger steamers a month and approximately one freight boat a month? A. Yes.

Q. And that has been going on for a year? A. Yes.

Q. And on freight boats you do not ever charge primage? A. No.

Q. Even where a contract provides that you can? A. We 5124
do not charge on freight boats.

Q. Are you related in any way to Arthur Cook of Lamport & Holt? A. He is my uncle.

Q. What connection has he with Lamport & Holt at the present time? A. He is the managing director—one of the managing directors.

Q. And previous to its incorporation he was a partner, wasn't he the managing partner? A. He was one of the managing partners.

Q. For how long a time? A. I could not say how long.

Q. You see him occasionally? A. I have not seen him for nearly a year now.

5125 Q. I mean occasionally you go to Europe? A. Occasionally, yes.

Q. How often during the time that you have been here, how often have you been to Europe? A. About every two years.

Q. Were you there about the time, or during 1908 at any time? A. Yes, I was there in the summer of 1908.

Q. About the time these agreements were formed, or about the time the pooling agreement was formed? A. No, I was there only on a visit.

5126 Q. Do you remember what time of the year that was? A. That I was in England, at home?

Q. Your home is England originally? A. Yes.

Q. And what time of the year were you there? A. I was there approximately in July.

Q. July 1908? A. Yes.

Q. That pooling agreement as I remember was signed in July, 1908? A. I could not say without seeing it.

Q. You, I suppose discussed things with Arthur Cook when you were over there, discussed the freight business from here to Brazil? A. No, I had only just been here.

5127 I went to Brazil in January and came back in July and went to England.

Q. You went to Brazil in January, 1908? A. Yes. That date is approximate, of course.

Q. Where did you go in Brazil? A. Bahia, Rio, Santos and San Paulo.

Q. For what purpose, Mr. Cook? A. Just simply to look over the ground and get a practical knowledge of the workings at the other end.

Q. That is, of the coffee business and so on? A. Yes.

5128 Q. What period were you there in Brazil? A. In February, 1908, passing through Brazil in February, 1908.

Q. You mean you spent about the month of February there, is that it? A. No, Just the time the steamer was in port. I took in Brazil on the way back.

Q. You talked with the shippers there, did you?

MR. BURLINGHAM: Objected to.

A. Simply socially; nothing else.

Q. Did you investigate the coffee situation? A. No, that was out of my province altogether. I had nothing to do with it.

Q. On your visit to England you say you usually see 5129
Arthur Cook? A. Invariably, yes.

Q. And generally talk with him to some extent about the business here?

MR. BURLINGHAM: Objected to as immaterial, irrelevant and incompetent.

A. Simply with regard to New York matters; nothing else.

Q. That is the New York and Brazil business? A. Yes.

Q. Did you ever talk to him about the business from 5130
Brazil to New York? A. Never.

Q. Did he ever enquire of you anything about your visit to Brazil when you were down there in 1908? A. Nothing further than just asked what I had done.

Q. He was not with you at that time in Brazil? A. Oh, no.

Q. He was down there about that time, wasn't he, or down there the year before or when? A. I could not say.

Q. You do not mean to be understood I suppose as saying that you never discussed that coffee situation at all 5131
with Mr. Arthur Cook? A. I never have discussed the coffee situation with Mr. Arthur Cook.

Q. Never did at all? A. Never have.

Q. Have you ever corresponded with him about the business here outside of the official correspondence of the office?

MR. BURLINGHAM: Objected to as immaterial.

A. No.

Q. In July, 1908, when you were over there was this pool- 5132
ing agreement discussed with you at all? A. Not at all.

Q. When did you first learn that there was a pooling agreement?

MR. BURLINGHAM: Objected to as incompetent and immaterial and irrelevant.

A. I presume when I came back from Brazil, about the middle of 1908.

Q. When you came back from Brazil? A. In 1908, yes.

Q. It was in July, 1908, that the pooling agreement was made? A. Yes, sir.

5133 Q. You went to Brazil? A. In January, 1908.

Q. And came back in March, didn't you? A. I came back in May.

Q. And you went to England in July? A. Yes.

Q. When did you come back from England? A. I suppose August or September.

Q. And you think that nothing was said to you at all about that pooling agreement until you returned to New York, and then you found it out from some other source?

MR. BURLINGHAM: Objected to as immaterial.

5134

A. Never discussed it in England at all.

Q. Mr. Arthur Cook comes here sometimes? A. Yes, he has paid periodical visits.

Q. And have you never discussed with him here that coffee situation at all?

MR. BURLINGHAM: Same objection.

A. Never.

Q. Or the rates from Brazil to New York? A. Never.

5135 Hearing adjourned to Thursday, July 3rd, 1913, at 10:30 o'clock A. M.

New York, July 3, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*

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MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin, Esq., and M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

MESSRS. SPOONER & COTTON, by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

WILLIAM LOWRY, recalled.

DIRECT EXAMINATION by Mr. Baldwin.

Q. Mr. Lowry, on page 294 of the record your testimony is to the effect that the Munson Line runs steamers from

Brazil; is that your testimony as you gave it? A. I don't 5137
remember exactly how I gave it, but I know that the Munson Line does not run steamers from Brazil.

Q. They run where? A. From Mobile to the Argentine and back.

Q. Do they go to Brazil? A. They do not touch Brazil on either voyage.

Q. On page 295 of the record—the record reads as follows: "I am a crown charterer?" A. My answer was "I was a time charterer."

Q. And it is in the record that you are? A. Yes. 5138

MR. BALDWIN: We would like to have corrected at page 295 of the record in the same way, to have the word "crown" stricken out and the word "time" substituted.

Q. In speaking of vessels that come to New York from Brazil after taking cargo there—at page 298—you answer "In regard to that I could not say positively, because I could not state which vessels take cargoes to Brazil only and only those small vessels come back to New York." 5139
Do you wish to modify or change that in any way? A. It is incorrectly reported. What I remember saying was—it should read, I could not state which vessels take cargoes to Brazil only, and those that call at Brazil on their way back from the Argentine to New York.

Q. At page 301, you want this answer amended: "Her dead weight was 3,300 tons" and would like to have that amended to read "8,300 tons"? It is evidently a typographical mistake, that is right, isn't it? A. That is the fact.

Q. And the last line, they have it here, 28 tons of rails 5140
when it should be corrected to read 2,800 tons of rails. That is correct, isn't it? A. Yes, sir.

Q. And on the bottom of page 303 this question was put to you: "How much short was she of the expiration of her term," and on the top of page 304 the answer reads: "One month and seventeen days." Do you want to make a correction to that? A. Yes, it should read two months.

MR. KIRLIN: What is it that is two months?

THE WITNESS: The unexpired balance of the charter of the steamer *Inkum*.

5141 MR. BALDWIN: At page 304, I will make some little change, the question "And you made some arrangement with regard to the charge of the hire" should read "charge for the hire."

Q. In answer to a question of Mr. Kirlin's on page 318: "It was all right except the word 'usually,'" and the witness says: "Well, they never ran light boats." What did you mean by that? A. To New Orleans should be added to that.

5142 Q. At page 299, the word "Lookins" at the bottom of the page—"He was agent of Lookins Iron & Steel Company," "Lookins" should be spelled "Lukens." On page 299, fifth line from the bottom: "MR. KIRLIN: Pan-American Mail" and the next line, put this question: "Q. What other business was he in?" and then the answer will read "He was agent of the Lukens Iron & Steel Company." That is correct, isn't it? A. That is correct.

Q. Now, Mr. Lowry, page 300, one of your answers is that their capital is supposed to be $3,000,000. Then Mr. Kirlin asked: "How much was paid up?" "The Witness: I
5143 could not state that." Then Mr. Kirlin says: "You say that it was about $30,000?" I do not find anywhere that you said there was $30,000; what have you to say about that? A. The question has evidently been omitted. Mr. Kirlin asked me have you ever heard that their capital was about $30,000, and I stated that I had heard so.

MR. KIRLIN: That is paid up capital?

THE WITNESS: Yes, sir.

Q. You would like to correct that then so as to appear in
5144 that form? A. Yes, sir.

Q. On page 301, "How much did she carry? A. Her dead weight was 3,300 tons." Do you want to correct that? A. The entire cargo carried was about 10,000 tons measurement; the agricultural implements carried were about 2,000 tons dead weight or about 4,000 tons measurement.

MR. SPOONER: What was the aggregate?

THE WITNESS: 10,000.

MR. KIRLIN: That same matter runs into the next question also.

Q. Just another question: "How much weight? A. I 5145
wouldn't like to put that in under forty cubic feet to the ton, because I don't know how it goes. I don't think it amounted to 10,000 measurement, but there was about 60 carloads." A. That was of the agricultural implements alone.

Q. Do you want to correct it in any way? A. The correction as made will cover this.

Q. Turn to page 321, the following question put to you: "According to your information is it customary to get despatch even as high a rate as that per day? A. From 5146
ten to fifteen. If we give a rate of thirty cents we won't get despatch." A. That should read, if we give a rate of thirty cents we would expect to get despatch.

Q. You want to correct it in that way? A. In that form.

Q. Now, Mr. Lowry, have you prepared a tabulation showing the yearly consolidation of statistics of the auditor for the Port of New York from 1908 to 1912 inclusive, exhibiting total of weights and values of imports from Brazil and percentage which coffee bears to total imports from the area served by the conference? A. I have. 5147

Q. Is this it? (Showing witness paper.) A. Yes, sir.

Q. What sources of information did you—what were your sources of information and what did you examine to make up that tabulation? A. The sheets of the auditor for the Port of New York, which sheets are prepared for the purpose of the statistics given to the Department of Commerce and Labor.

MR. KIRLIN: Who is the auditor of the Port of New York?

Q. You mean the auditor in this building? A. In this 5148
building, room 425. His name is Lantz.

MR. KIRLIN: What officer is he, officer of what department?

THE WITNESS: Collector.

MR. BALDWIN: It is all fixed by statute and regulation.

Q. Did you make that up correctly? A. It is correct.

MR. BALDWIN: I offer it in evidence.

MR. KIRLIN: We object to the document as incom-

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5149 petent, immaterial and irrelevant; also upon the further ground that no sufficient foundation has been laid for the examination of the witness as a statistician.

Q. Mr. Lowry, what did you examine and in what office, for the purpose of the statistics that appear here, outside of the working out of percentages? A. I examined the Brazil sheets in the office of the auditor for the port of New York, room 425 in this building.

5150 Q. Explain what you mean by Brazil sheets? A. The Brazil sheets are the tabulations made by the office of the auditor from the Custom House entries.

MR. KIRLIN: We object to the witness stating by hearsay how the source of his information was made up by other people.

MR. BALDWIN: He has a right to state it; whether we qualify him, that is a different question, but he has a right to state what he examined.

MR. KIRLIN: We do not object to that; we object
5151 to his stating how they are made up by the auditor's office or from what information.

A. As I saw the operation of making up these sheets and have seen the original entries from which they are made I am in a position to state that they are made from these entries in the Custom House.

MR. KIRLIN: We repeat our objection.

Q. And for those dates? A. Yes.

5152 MR. KIRLIN: Move to strike out the testimony as incompetent.

Q. Mr. Lowry, you are employed by the Department of Justice? A. Yes, sir.

Q. And you have been how long? A. Since sometime in January; I do not remember the exact date.

Q. And you have been under regular pay by them? A. I am.

Q. By that department? A. Yes.

Q. And assigned among other things to this case? A. I have.

Q. And authorized or instructed to perform such duties as you were told to perform either by me or Mr. Montgomery? A. That is the case. 5153

Mr. Kirlin: Is this employment since you gave testimony as a witness for the Government.

The Witness: Yes, at the time I gave the testimony I had no idea I would remain in New York.

Q. You may state whether or not that your employment was upon the recommendation of both Mr. Montgomery and myself? A. That is the case. 5154

Q. Just state in your own way what you did, what you examined? A. I examined these monthly sheets.

Q. What monthly sheets? A. Which show the tabulations of the entries from Brazil to the port of New York during each month. This compilation was made yearly and the commodities were segregated. From this segregation——

Q. You mean this compilation of the—— A. Of the entire imports from Brazil.

Q. Compilation made by whom? A. Made in the auditor's office. 5155

Q. You mean the auditor of the port of New York? A. Auditor of the port of New York. From this segregation I deducted such commodities as were not carried by the conference lines due to the area in which they originated. I worked out the percentage which coffee bore to the balance of the commodities which originated in the area served by the conference lines.

Q. What do you mean by the word originated? A. By originated I mean which are shipped from various ports.

Q. Coffee ports? A. From Mid-Brazil ports; the ports as far north as Pernambuco. 5156

Q. Just take up from where I left off and state the meaning of this exhibit? A. Under 1908 the first item is New York imports, 580,938,885 pounds, which reduced to tons gives 259,348 tons.

By Mr. Kirlin.

Q. Is that the total import from Brazil for that year? A. Yes.

Q. Of every kind of produce? A. Every kind of produce from Brazil for the year 1908.

5157 MR. MONTGOMERY: All the ports?

THE WITNESS: All the ports. Under this will be found commodities not originating in any coffee ports: sugar 23,600,253; rubber 38,028,444 pounds, making a total, which is extended, of 61,628,697 pounds.

By Mr. Kirlin.

Q. What are the ports that you have dealt with as coffee ports? A. I excluded the ports from which the sugar
5158 and rubber, that is, from which they are carried. The conference lines do not carry sugar and the percentage of rubber which they carry is shown in their own statement.

Q. Then, although they do not carry sugar, it does not follow sugar is not carried from ports from which they carry coffee? A. Sugar originates in Maceio and Pernambuco.

Q. I do not want to argue the matter with you further than that I wanted to know where this sugar cargo originated, the ports, so that we could see whether it came from ports which were non-coffee ports? A. Which I
5159 have stated as being ports north of Bahia. This deduction leaves 519,310,168 pounds of commodities coming from all ports in Brazil to New York, excluding the sugar and the rubber. This extended and reduced to 231,835 tons. The value of the deducted commodities is found——

MR. BALDWIN: Was the value stated in the invoices?

THE WITNESS: The value is stated in the invoices and appears on the Brazil sheets. Value of the rubber $23,178,422; the value of Brazil nuts is $585,-
5160 032, and I may mention here that there was no weight given on the Brazil nuts, so that the Brazil nuts were not deducted from the total imports. $445,456 of cane sugar, making a total of $24,208,-920, which deducted from the total value of imports, which was $64,258,848, leaves a balance of $40,049,928 worth of commodities which came from the mid-Brazil ports—presumably came from mid-Brazil ports.

By Mr. Kirlin.

Q. Do you mean by that all ports south of Bahia? A.

All ports—just wait one moment on that. All ports in- 5161
cluding Bahia. I might mention that this will also include some commodities coming from northern ports, but of negligible quantity. The value of the coffee as shown on these sheets by the auditor was $34,745,201. The weight of the coffee for 1908 was 495,560,477 pounds, or 221,233 tons, which gave in bags 3,754,246. This by weight was 95-2/5% of the total importation from coffee ports as far north and including Bahia. By value this was 86% of the total importations from the same ports. The succeeding years were worked out in the same manner. 5162

Yearly consolidation of statistics of auditor for the port of New York for 1908 to 1912 inclusive marked Petitioner's Exhibit 261.

THE WITNESS: I might mention the value of the coffee as given on the sheets worked out an average of 9-3/10c per pound.

By Mr. Baldwin.

Q. Now, this sheet or tabulation which now bears the Exhibit 261, has this a tabulation of weights and values 5163
and commodities and ports mentioned for each of the years inclusive from 1908 to 1912? A. Inclusive, it does.

Q. In other words, the percentage of the coffee and its value appears each year? A. It does.

Q. Did you make up another tabulation, Mr. Lowry, showing the weights and values of imports from Brazil segregated as to commodities for the years 1908 to 1912 inclusive? A. I have.

Q. From what sources did you examine or compare and did you look through to get the information upon which 5164
you made this tabulation? A. From the same sources as those used in the tabulation of the yearly statistics. This being a consolidation of the yearly statistics for the five year period.

MR. BALDWIN: I offer that in evidence.

MR. KIRLIN: We make the same objections to that as we make to the production of the Exhibit 261.

Marked Petitioner's Exhibit 262.

Q. Now you may take the exhibit marked 262 and explain its plan and what it shows generally? A. I have here

5165 segregated the various commodities which move in largest volume from Brazil and have given the total weight in pounds which they aggregate for the period of the five years from 1908 to 1912 inclusive; also giving their values in dollars as taken from the records mentioned. I show also the articles which originated in the ports north of Bahia for the same period and have deducted these commodities and their values from the total importations, or from the weight of the total importations, and the value of the total importations; I have also calculated the percent-
5166 age which coffee bears to this total both by weight and value and show the total number of bags of coffee imported through the port of New York for the five year period from Brazil.

Q. Speaking about the commodities originating at the ports of North Brazil, are these commodities mentioned in this tabulation under the head "Commodities not originating in coffee ports"? A. They are.

Q. And you say that you deducted those from the total? A. I deducted those from the total importations.

5167 Q. In calculating percentages on both Exhibits 261 and 262, are those percentages correctly calculated? A. They are correctly calculated.

Q. Mr. Lowry, how long were you engaged in getting together the statistics and compiling these statistics or tabulations? A. I should say about three weeks; I don't remember exactly.

Q. You had to examine a large number of documents? A. I had to examine about sixty sheets.

Q. And have you any idea about the number of invoices that were involved from which the auditor makes up those
5168 sheets? A. I haven't any idea, but I know that they would be a very large number.

Q. Have you made up any figures showing the total amount of the cargoes carried from the south and mid-Brazil ports to New York by all of the steamers of the conference lines? A. I have.

Q. From 1908 to 1912 inclusive? A. I have.

Q. And what was the source of the information which you had to work on? A. Exhibits given by the various lines in evidence in this case.

Q. Exhibits 208, 217, 229, 245, 247? A. Those are they.

Q. Is this it? (Showing witness.) A. This is it.

MR. BALDWIN: I offer that in evidence. 5169
Marked Petitioner's Exhibit 263.

Q. You also have here some statistics relating to the Lloyd Brazileiro—I wish you would just take this Exhibit 263 and explain it? A. I here show the number of voyages made by each of the conference lines from Brazil to New York, the number of bags of coffee which they carried as shown by their exhibits, the number of tons of rubber which they carried and the number of tons of other cargo. I also show the number of voyages of the Lloyd Brazileiro, 5170
the number of bags of coffee which they carried according to their statement, but find no figures available as to the number of tons of rubber or other cargo which they carried, their records being incomplete. I further show the percentage which coffee bears to the total cargo carried by the conference lines as segregated from the Lloyd Brazileiro. I show the percentage which coffee carried by the conference lines bears to the total coffee carried by all steamers of all lines or outsiders. I show the percentage which coffee carried by the Lloyd Brazileiro bears to the coffee 5171
carried by all other steamers. I show in foot note certain errors which appeared in the statements made by the various lines, and on the years when Arbuckles' chartered steamers carried coffee I show the amount of coffee which they carried and the percentage which the coffee they carried bears to the total coffee imported from Brazil to the port of New York for the same year.

Q. These foot notes that you speak of "L. & H., *Canning*, May 8th," is that what you mean is a—— A. I mean the *Canning* made a voyage from Brazil to New York reaching here in May, 1908, and did not appear in the list furnished 5172
by Lamport & Holt.

Q. And the *Camoens*, April 16th? A. A parallel case.

MR. KIRLIN: Did she carry anything?
THE WITNESS: I could not say.

Q. From what source did you get information, did you exhaust, to make either the corrections or any matter that appears here after you examined Exhibits 208, 217, 229, 249 and 247? A. I examined the index of foreign entries for each of these years.

Q. Where? A. In the Second Division, Marine Division

5173 of the Custom House, and in one case where a steamer was included in the Lamport & Holt statement and it was probably an error I consulted the manifests on file in the archives of the Custom House. I allude to the *Tocantins*, which was included by the Lamport & Holt Line in their statement, while she came for the Lloyd Brazileiro for that particular trip.

Q. Now, have you made up a statement showing the advertised dates of sailing of the conference lines from May, 1911 to May, 1912? A. I have.

5174 Q. What did you examine and what is the source of your information about it? A. I examined the files of the Journal of Commerce, one each week for the period since May, 1911.

Q. And each issue you mean? A. One issue each week, which was all that I was——

Q. And in that you found the advertisements of the conference lines? A. All that I found of these advertisements of the conference lines and their sailing dates——

Q. You have then in this statement stated the name of the steamer and the date the advertisement appears in the 5175 Journal of Commerce? A. I have.

Q. And the date when the respective boats were advertised to sail? A. I have.

Q. And then you have made a tabulation where there has been any change in the date of the sailing? A. I have, change in the advertisement as to the date of the sailing.

Q. When you use the word change you mean they made a change of date in the advertisement? A. I show both; the day when the advertisement was changed and the day for which the sailing was changed.

5176 Q. And then also you have a column that shows the actual date of sailing of the advertised boats? A. Of the advertised boats, as shown by Exhibit 212 as far as that exhibit went, and after that by the sailings as shown in these publications, the New York Maritime Register which was for a few dates only.

MR. BALDWIN: I offer that in evidence.

Marked Petitioner's Exhibit 264.

Q. This is accurately made up? A. It is accurately made up.

Q. I notice that you have an addenda at the bottom of the 5177
first page of this exhibit, a star, sailed for the River Plate ports only? A. That referred to the boat which was advertised to sail for Brazil and evidently had been changed to the River Plate only.

Q. Which one does that mean? A. That refers to the steamer marked with a star.

MR. KIRLIN: The Eastern Prince sailed March 8th.

Q. What is this Maritime Register that you refer to? 5178
A. It is a weekly publication which follows the movement of the steamer; that is, shows her position on the date of publication, shows the sailing dates and the dates when they arrive at the ports for which they sailed.

Q. It is a well known journal? A. Well known journal.

Q. Which makes it a business of publishing facts or statistics relative to the Maritime business? A. That is it.

Q. An old institution, is it? A. Very old.

MR. SPOONER: Did you say it was generally 5179
correct?

THE WITNESS: I did not say it was generally correct; it is usually correct; though sometimes there are errors.

Q. That is a paper in general circulation here, is it not, among those interested in maritime affairs? A. It is.

Q. Have you compared these results from the exhibits introduced here by the conference lines—you might state what you found? A. The Government figures show in the 5180
period of five years 22,891 bags of coffee more than the figures of the lines.

Q. And you mean the figures of the lines as appearing —— A. As appearing from their exhibits in this case.

MR. KIRLIN: By lines you mean everybody that brought coffee?

THE WITNESS: Yes, from all sources.

A. (Continuing.) It includes every vessel that brought coffee for that period and I might say that this difference, while it may very well occur in the calculations of the au-

5181 ditor where they have to examine probably for the period 100,000 invoices, that it also might come from a vessel which entered in one year and the figures as to the entry of the merchandise appeared in another.

Q. Have you made any calculation to know that if you accept the figures as appear by the figures in this case as to the total amount of coffee imported to what extent, if any, it would affect the percentage which you worked out from the Government sheets? A. I could not work it out accurately. I think it is about ¾ of 1% a year; that will be
5182 about it.

Cross-Examination by Mr. Kirlin:

Q. Mr. Lowry, on your Exhibit 261, the first item reads: "Commodities not originating in coffee ports"; won't you define the sense in which you use the words "coffee ports" in your exhibit? A. I had in mind the ports from which the bulk of coffee from Brazil is shipped.

Mr. Baldwin: And they are what?

The Witness: They are Santos, Rio, Victoria
5183 and Bahia.

Q. Well now, you, of course, know that there are commodities brought here from ports south of Santos on conference lines' boats? A. I know.

Q. How have you dealt with them at all; those are included in those served by the conference? A. There is no method of segregating those.

Q. Are the things that come from those ports south of Santos treated in this statement as commodities not
5184 originating in coffee ports? A. No, they are treated as though they originated in coffee ports.

Q. Then do you mean by commodities not originating in coffee ports the articles of produce imported from Brazil, from ports north of Bahia, or including Bahia, and all ports north? A. I specifically had in mind the ports north of Bahia, although a small amount of sugar sometimes comes from Bahia.

Q. To be accurate about it, is Bahia treated as a coffee port in Exhibit 261? A. Yes, treated as a coffee port.

Q. So, then, commodities not originating in coffee ports in this statement include only commodities which origin-

ated in ports north of Bahia? A. That is practically it. 5185
Q. That is the way you have made this up? A. That is the way I made it up.

MR. BALDWIN: When you used the words "coffee ports" you had in mind the evidence in this case which had already defined by the various witnessess what are the coffee ports.

THE WITNESS: I had that in mind.

Q. In Exhibit 262 there is also a sub-heading "Commodities not originating in coffee ports"; are the commod- 5186
ities there referred to commodities which originated exclusively in ports north of Bahia also? A. Almost exclusively. Some of the same commodities may originate in small quantities at Bahia or south of Bahia, but I have in mind particularly the commodities which originate in ports served by the Booth Line and tramp steamers.

Q. Now, Mr. Lowry, you put down in figures, pounds, tons or dollars and, of course, it must include articles imported from Bahia or it must not include it; now, which is it? A. It includes articles which are not imported from 5187
Bahia in quantities of any value; in other than negligible quantities.

Q. I take it from your answer now that it does exclude to some extent articles imported from Bahia and also from some ports south of that it may? A. It may include articles which may be imported in negligible quantities from those ports.

Q. Now, is the fact that you have included some things that originated in Bahia and ports south under the heading of "Commodities not originating in coffee ports" due 5188
to the fact that you found those articles mixed up in the auditor's sheets with articles of similar class that came from ports north of Bahia? A. That is the case, and it was impossible to separate them. I made every effort to do so but found it was impossible to separate them.

Q. On this Exhibit 262 the head and foot totals from coffee ports means totals from Bahia and all ports south? A. Bahia and all ports south.

Q. Which are served by the conference lines? A. Yes.

Q. Whether south of Santos or not? A. Yes.

Q. Referring to Exhibit 264, from what sources did you

5189 say you derived the dates of the advertisements of sailing steamers? A. From a file of the issues of the Journals of Commerce, one each week from May, 1911 to May, 1912.

Q. You examined one newspaper each week? A. Of each week.

Q. You did not examine the newspaper of every day? A. It was impossible to get the complete file.

Q. So that for aught it appears, for aught that you know, there may have been other advertisements or notices of changes of advertisements in the copies of the
5190 different weeks that you did not examine? A. There may have been a change within the seven days, or within the six days intervening in each week.

Q. Why did you not take the date of sailings from the Journal of Commerce instead of the Maritime Register? A. Because it is much simpler and easier to take them from the Maritime Register.

Q. That is a weekly paper? A. Yes.

Q. Is the date that you have here for sailing the date on which the sailing is reported or is it the date on which the sailing actually occurred? A. From May, 1911, until and
5191 including December, 1911, the date of sailing is taken from Exhibit 212, which was given by Mr. Gerhard. From January, 1913, to May, 1913, I took them from the Maritime Register. The Maritime Register, as I understand, they get that information from the clearances in the Custom House.

Q. Now, Mr. Lowry, you know that the clearance dates and sailing dates are not always identical? A. That is so. When I said clearances I really had in mind not the clearances, but the Naval Officer's report of the sailings, which
5192 is issued in manifold and given to each of these publications.

Q. For instance, in the Journal of Commerce on this 3rd day of July we find under the heading "Sailed" steamer so and so. Now, that means really that the vessel sailed yesterday? A. Will you repeat that? I did not catch it exactly.

Q. (Question read.) A. No, they would state the date on which it sailed; sailed such and such a day.

Q. That is the way it appears in the morning papers always, sailed, steamer so and so, and what I mean is sailed on not the day of the publication of the newspaper

but it must have been sailed on the preceding day in order 5193
to be recorded? A. I did not take the sailings from the Journal of Commerce; I did not think it—the Maritime Register states the date on which the clearance took place.

Q. How large a portion of this rests on the Maritime? A. From January, 1913, to May, 1913.

MR. BALDWIN: And the balance is from Mr. Gerhard's Exhibit?

THE WITNESS: Yes.

MR. KIRLIN: It is understood that we reserve our further cross-examination until we have had oppor- 5194
tunity to go over the Exhibits in detail.

RE-DIRECT by Mr. Baldwin.

Q. In Exhibit 262 I have forgotten to ask you about the articles that appear here. Now, with the exception of the lots which you include under the head of sailings are the articles imported from Brail all articles which appear on those sheets? A. They are, although I may have included some minor articles in the miscellaneous which I sepa- 5195
rated on the sheets for convenience sake when the quantity of them was negligible.

Hearing adjourned to September 10th, 1913, at 10:30 o'clock A. M.

New York, September 10, 1913.

By consent, hearing adjourned to September 22nd, 1913, at 10:30 o'clock A. M. 5196

5197 New York, September 22, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER; by Charles Burlingham, Esq., and Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*

MESSRS. CONVERS & KIRLIN; by J. Parker Kirlin,
5198 Esq., M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

MESSRS. SPOONER & COTTON; by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

LOUIS R. GRAY, being first sworn, testified as follows:

DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Gray, where do you reside? A. Rio de Janeiro.

Q. How long have you lived there? A. 25 years.

5199 Q. Have you recently arrived in this country? A. On the 13th.

Q. On the 13th of this month? A. Yes, sir.

Q. You appeared here for the purpose of becoming a witness, have you not, in this case? A. Yes.

Q. What is your business in Rio de Janeiro? A. Manager of Arbuckle & Company's Brazil houses.

Q. How long have you held that position? A. Since the first of July, 1901.

Q. And as manager, that means you have the general
5200 control and direction of their business? A. In Brazil, under or subject to the orders from New York.

Q. They are large shippers of coffee, are they not, from Brazil to American ports and particularly New York? A. At times.

Q. And have been since—— A. 1880.

Q. You say you have been with them since when? A. Since 1881.

Q. How long have you been manager? A. Since 1901.

Q. And you are entirely familiar with their coffee business from Brazil to New York? A. Yes. I was here in New York before I went to Brazil.

Q. You were here before you went to Brazil? A. Yes, 5201
I went with them in 1881 and went to Brazil in 1888.

Q. Was there any period of time when they shipped by any one of the conference lines? A. Since I have been in Brazil?

Q. Yes? A. Since I went there in 1888 to the first of July, 1901.

Q. What line did they ship by? A. Lamport & Holt.

Q. Did they ship a good deal of coffee in that time? A. One year I think at least 1,200,000 bags.

Q. How about the shipments in volume in the year that 5202
you were shipping by the Lamport & Holt compared to the present time? A. They were much larger.

By Mr. Montgomery:

Q. Which are much larger? A. As I understand it, you mean since we left the Lamport & Holt have the shipments averaged smaller yearly?

MR. BALDWIN: Yes, than your shipments with the Lamport & Holt?

THE WITNESS: Less since we left them than a 5203
few years previous.

Q. During that time did you——

MR. SPOONER: You mean the aggregate was less?

THE WITNESS: If you take five years before we left, or six years if you like——

Q. You mean left Lamport & Holt? A. Yes.

Q. And six years afterward? A. And six years following, or even ten years, if you like, in ten years before 5204
we left the shipments were considerably larger than since.

Q. Do you mean the aggregate of the six, or yearly shipments? A. You have to take an average. If you will allow me, I think I have made a mistake in one of these which I gave you as to when I left the syndicate lines.

Q. When was that? A. I gave you the first of July, 1901, and it should have been to the first of July, 1906. I got 1901 I remember from—you asked me that question——

Q. You have not testified to that. But you left in 1906? A. Yes. From 1906 to to-day our yearly average has been less than for the seven years previous to that. The total shipments from Brazil, or even the average per year.

5205 Q. During the time you were shipping with the Lamport & Holt Line did you find it necessary to use any other line; in other words, were the facilities sufficient? A. Yes.

Q. What was—which was it; did you find it necessary to use any other line during that time? A. No, sir.

Q. And their facilities were sufficient? A. Yes. We may have once or twice shipped a small quantity on a Prince boat, but that would be simply incidental and I am not positive that we did do it, but I would not want to say positively that we did not do it.

5206 Q. Were you more or less familiar with the sailings of the Lamport & Holt Line during the period that you were shipping over that line? A. We were always advised and given room in hand on every ship that sailed.

Q. Did you notice whether during that time they had a boat during the first and a boat during the second half of the month? A. I don't think they made a point of running them as regularly as they have lately, because the passenger service was not the same. Now, they have the passenger service, that is regulated with larger boats and all that, and they have a fixed date of sailing.

5207 Q. I am speaking now, not of a fixed date, but during that period of time was one of their boats sailing at some time during the first half and another sailing sometimes during the second half on an average? A. On an average, yes. Probably oftener.

Q. I understood you to say a while ago that you ceased your shipments over the Lamport & Holt Line in 1906, is that right? A. The first of July, 1906.

Q. Now then, how long from 1906 down to 1909—how did you make your shipments? A. In chartered steamers.

5208 If you will allow me to think back—I am answering so quickly that I want to get my dates exactly right as I am taking them principally from memory, and I may make a mistake and I don't want to.

Q. Do you want to correct your testimony as to when you left the syndicate lines? A. Yes, sir.

Q. When was it? A. The first date I gave you is correct; the first of July, 1901, is the correct date.

Q. From 1901 down until what time was it that you shipped by chartered steamers? A. We shipped in chartered boats from the first of July, 1901; that is, the first two steamers we got, the *Rossa* and the *Euclid*, which

came up here under the Brazilian flag. We chartered both 5209
of them; they had been formerly Lamport & Holt steamers, bought by a man named Sebastian Prisbo; then to 1909 we shipped in chartered boats with the exception of two or three shipments in 1905 and one in 1906, when they came up by steamers of the syndicate lines, one Prince boat I think it was and two or three Lamport & Holt steamers brought up small shipments for us.

Q. That was in nineteen hundred what? A. 1905 and 1906.

Q. That would be three of those, three shipments? A. 5210
At least three; three or four; I am not quite sure which.

Q. What, if anything—by the way, who are the agents for the Lamport & Holt Line in Brazil? A. Norton, Megaw & Company.

Q. In Rio I mean? A. Yes, and in Santos—do you want Santos also?

Q. Give us the names of their agents in Brazil? A. Hampshire—F. S. Hampshire & Company, and Bahia is the man named Benn—I don't know the exact name of the firm.

Q. Who were the agents for the Prince Line? A. In Rio, 5211
Davidson, Pullen & Company.

Q. And in Santos? A. In Santos, I don't know the name.

Q. How long have these agents for these two lines that you have mentioned, been the agents in Rio for these companies? A. Well, as long as I can remember.

Q. They have as long as you have been living there? A. Yes, sir.

Q. You know them, I suppose? A. Yes, personally. That is, the managers; of course, the principals, Norton, 5212
Megaw are in Europe.

Q. Who were the managers that you met? A. The present manager Mr. Perkins I know personally.

Q. Of what line? A. Lamport & Holt; Norton, Megaw.

Q. How long has he been? A. I wouldn't want to say when he became manager; the man before him was a man named Sturdy.

Q. During the time of your activities with them was Perkins the manager? A. No, sir; before him a Mr. Sturdy and before him—S-t-u-r-d-y or S-t-u-r-d-i-e—and there was one before him; I have forgotten his name.

Q. Who was manager of the Prince Line? A. Mr. Taffe

5213 of the shipping department. Of course, these managers were managers of the shipping department I am speaking about; not the general mangers.

Q. They are the parties with whom you would do business if you wished to engage room on any of the steamers of these respective lines? A. Yes, sir.

Q. When was the first time, if any, that you had any negotiations or talked with the Lamport & Holt Line or the Prince Line with reference to shipping coffee from Brazil to New York after you had left the Lamport & Holt Line
5214 and after you had taken up the shipping of coffee by chartered steamers; that would be somewhere in 1909 I take it? A. Yes.

MR. KIRLIN: We object to these conversations.

Q. I asked when it was, if any; when was it you first had any negotiations with reference to shipping coffee? A. After the shipments I spoke of in 1905 and 1906?

Q. Yes? A. In March, 1909.

Q. And with whom did you have your negotiations? A.
5215 I had with Mr. Perkins and Mr. Taffe.

Q. Were they at that time managers respectively of the Lamport & Holt Line and the Prince Line? A. The freight and shipping department of Norton, Megaw and Davidson & Pullen Company for the two different lines.

Q. Just state in your own way what you did and what was the conversation passed between you and Mr. Perkins first with reference to the proposed shipment of coffee?

MR. BURLINGHAM: We object on the ground of incompetency, immateriality and irrelevancy and on
5216 the further ground that the credentials of these gentlemen as agents are not properly shown; and on the further ground the persons to whom the questions relate are not shown to have had any authority with regard to questions of policy.

Q. Before you answer that question I will ask some further questions about Mr. Perkins and Mr. Taffe of these two firms. Where does the Lamport & Holt Line have its office in Rio? A. The street number?

Q. No, what street? A. In the Rua Premiero de Março.

Q. And is that the office where the Lamport & Holt Line has its office? A. Norton, Megaw, yes.

Q. Is that where you have always had your transactions with the Lamport & Holt Line, in that building? A. When we were shipping over these lines we always had our transactions with them. 5217

Q. Had they a regular shipping office there, with signs displayed as to whether it was the agency of the Lamport & Holt Line? A. Yes; they advertised in the newspapers also.

Q. Was there any other shipping office of the Lamport & Holt Line in Rio that you know anything about? A. No.

Q. And the place of business down there for a considerable period of time—— A. Since I have been in Rio. 5218

Q. And you say you noticed they advertised as agents of the line? A. Yes, sir.

Q. And that means for a continuous period of time? A. Yes.

Q. A large office? A. Fairly large, yes. three floors I think.

Q. Is that the place where merchants in Rio would have to go to make arrangements with the Lamport & Holt Line for their shipments; do you know of any other place? A. No other place. 5219

Q. It was generally understood, was it not, to be the general agency of the business there? A. Yes.

Q. You had correspondence with them from time to time? A. Yes, sir.

Q. And their letterheads, did they indicate in any way, any advertisements on the letterheads, as to whether they were agents or not? A. I don't think we ever received a letter from them.

Q. You always addressed your correspondence to that place? A. Yes. 5220

Q. And to them as agents of the Lamport & Holt Line? A. Yes, sir.

Q. When you were shipping over the Lamport & Holt Line was it the same place that you had your transactions? A. Yes, the same place.

Q. The same firm? A. The same firm.

Q. But during the period of time the managers of the shipping department you saw? A. Yes.

Q. Now, how long had Mr. Perkins to your knowledge been acting as shipping manager of the Lamport & Holt Line? A. I think either since 1900 or 1903; I cannot re-

5221 member exactly which; I think Mr. Sturdy left around there.

Q. And up to the present time? A. Yes, sir.

Q. He is still the ostensible shipping manager? A. Yes, sir.

Q. Now, Mr. Gray, you can go on and state your conversation with Mr. Perkins on March 25th, 1909—I mean in 1909, whatever the date was.

MR. BURLINGHAM: Same objection.

5222 A. I shall give this testimony in my own words——

Q. Give it in your own way, of course? A. Without being positive as to the days, except the months, we received a telegram from New York they wished to ship coffee as quickly as possible and how I could ship; we had been shipping some coffee by the Lloyd Brazileiro and we had no chartered boat ready for prompt shipment, so I went around to Norton, Megaw and saw Mr. Perkins——

Q. That is this same place? A. Yes.

Q. And the same Perkins? A. Yes. With the idea that
5223 perhaps they would take our coffee to New York, although it was a sort of a forlorn hope in a way——

Q. Don't put in your feelings; say what happened? A. I went around and saw him and from his conversation I judged that the syndicate lines would take our coffee.

Q. You are giving conclusions. State as nearly as you can what he said to you and what you said to Perkins? A. I am going to say that. It caused me to form this impression. I cannot remember exactly what I said to him except that I suggested that it would be a good time now as we had coffee for shipment to try and get Arbuckles
5224 back shipping by the syndicate lines, to which naturally he agreed, and when I left him it was under the impression that he would telegraph to Liverpool asking at what rate they would take our coffee, or if they would take it, or if they would give us room. How I reached that conclusion I cannot say positively, because the words slip from my memory.

MR. BURLINGHAM: We object to the witness——

Q. Mr. Gray, this is a hearing and while no person expects you to give the exact words—— A. No, sir.

Q. All you can do is to give your recollection of the con- 5225
versation that took place between you? A. Yes, sir.

Q. What he said and what you said? A. Very well. I came—shall I repeat that or go on?

Q. All that you have to do now, give as near as you can to what you remember he said and what you said to him? A. Yes, After leaving him——

Q. No. A. Well, I do not quite know what to say. You asked me to say the words the man said. I gave my impression which I received, but I cannot——

MR. SPOONER: We do not care about the im- 5226
pression.

THE WITNESS: I know, sir, but I want to put it in words.

Q. After you said to him, you thought—— A. I said to him that I thought that if they wanted to ship this coffee—I thought it would be a good opportunity for him, or rather, the syndicate lines, to get Arbuckle back shipping coffee by those lines, the Lamport & Holt or the Prince Line, and he agreed. Then he told me to come back to- 5227
morrow, the next day.

Q. Did you go back the next day? A. I then went to the office and telegraphed to New York that we could probably ship by syndicate lines.

Q. You mean to Arbuckle & Company when you say New York? A. Yes, Arbuckle Brothers, New York.

Q. Then what did you do? A. The next day I went back.

Q. Did you see Mr. Perkins? A. I saw Mr. Perkins and Mr. Perkins told me they had no boat to take our coffee, 5228
but——

Q. Was there any boat there then at that time? A. The Byron—to go and see Mr. Taffe and he could possibly fix me up.

Q. Of the Prince Line? A. Of the Prince Line. I went and saw Mr. Taffe. Mr. Taffe said he would be very glad to accept our coffee if we would——

MR. KIRLIN: I object to these conversations with Mr. Taffe upon the ground that his authority and credentials and power to make contracts is not shown.

5229 MR. BURLINGHAM: I move to strike out all of this line of testimony on the ground already stated and on the further ground that he is stating his conclusion and impression.

Q. You have testified that Mr. Taffe was the shipping agent of this firm, Davidson, Pullen & Company? A. Yes, sir.

Q. Where did they have their place of business?

MR. KIRLIN: I do not think he said he was ship-
5230 ping agent, that he——

THE WITNESS: Manager of the shipping department. Davidson, Pullen & Company are agents for the Prince Line and he is the manager of that department.

MR. KIRLIN: I object to the characterization of this witness of Mr. Taffe's functions as manager.

Q. Where did Davidson, Pullen & Company have their office? A. Rua Cuicanda.

5231 Q. Did they have a regular building there? A. Yes, sir.

Q. And any signs up indicating that they were agents for the Prince Line? A. Yes, sir.

Q. Did you know whether or not that they were advertised as agents for the Prince Line? A. Yes, sir.

Q. When you went around to Davidson, Pullen & Company's office did you enquire for any particular person, or did you know Mr. Taffe? A. I went right to Mr. Taffe.

Q. Why did you go direct to him? A. Because I know he is the man to go to.

5232 Q. He was the man to go to by any person who wanted to make shipments over the Prince Line? A. Yes, sir.

Q. How long had you known Mr. Taffe? A. 20 years.

Q. And you have made shipments over the Prince Line? A. Yes, sir.

Q. With whom did you make the arrangements? A. Mr. Peck, the broker.

Q. Did you have any talk with Mr. Taffe? A. In those days?

Q. Yes? A. No, not as a rule. We made our contracts with the broker.

Q. In those days? A. Yes, sir.

Q. How did you know Mr. Taffe was the person to go to 5233
see with Davidson, Pullen & Company? A. Because I know he is the manager of the shipping department.

Q. How do you know that?

MR. KIRLIN: Objected to as calling for conclusions.

Q. Did he advertise as such? A. His name?

Q. Yes? A. No, sir.

Q. You must have some information to fix in your mind to go and see Mr. Taffe?

5234

MR. KIRLIN: This seems rather leading.

A. Everybody in Rio de Janeiro knows that he is the manager.

MR. KIRLIN: Move to strike it out.

Q. Now, go ahead and state, Mr. Gray, what conversation you had with Mr. Taffe?

MR. KIRLIN: Object to these conversations as incompetent.

5235

Q. How do you spell his name? A. T-a-a-f-t—it may be f-e; it is a Dutch name.

Q. Go ahead and tell your story? A. When I saw Mr. Taafe——

Q. What did you say to Mr. Taafe? A. I told him Mr. Perkins had sent me around to see him in regard to our shipping prompt shipments by their steamers.

Q. Coffee you are speaking of? A. Coffee from Arbuckle & Company to Arbuckle Brothers, New York. He said he would be very glad to accept our coffee upon the condition 5236
that we write him a letter guaranteeing to only ship by the syndicate lines, which was afterwards modified to say that we could ship in steamers carrying the Brazilian flag if at the same rate of freight as the Syndicate Lines offered.

Q. Do you mean to say that he asked that right at that conversation? A. Two days later I think it was; two days later it was.

Q. Did he say anything about your leaving off shipping by the Lloyd Brazileiro that did not carry the Brazilian flag? A. Positively he said that.

Q. He said that, did he? A. Yes, sir.

Q. He said what, positively? A. That we could not ship

5237 by the syndicate lines if we shipped by the Lloyd Brazileiro boats carrying the English flag.

Q. Now, you said the first condition that he imposed he changed a couple of days afterward? A. Yes.

Q. In a conversation you had with him personally? A. Yes, sir.

Q. At this same office? A. At this same office.

Q. What was the outcome of that; what did you say to him? A. I said to him positively well, we cannot ship by steamers that call at several different ports and take
5238 30 days to come to New York.

Q. And you referred to the class of steamers carrying what flag? A. The Lloyd Brazileiro or any boats carrying the Brazilian flag that had the same rate of freight as that offered by the Syndicate Lines.

Q. That is, the boats carrying the Brazilian flag were very much slower boats and made more frequent stops? A. Made more frequent stops.

Q. And therefore, take much longer on the way to the American ports? A. Yes.

5239 Q. What did he say to that? A. He said that would be the only way in which they could accept our coffee.

Q. You say how many days did those boats carrying the Brazilian flag consume from Rio to New York? A. 30.

Q. As against the time of the—— A. From 18 to 20 days.

Q. By the other boats? A. Yes, sir.

Q. Were the boats carrying the Brazilian flag the only ones that made these frequent stops to New York? A. Yes, sir.

Q. You went to him as I recollect—you wanted the quick
5240 shipment, wasn't that the idea? A. Yes.

Q. What else, if anything, did Mr. Taafe say when you told him you could not ship over those boats taking 30 days and making frequent stops? A. That was the only basis on which we could do business.

Q. Did he say anything about varying conditions in any way? A. He refused the freight.

Q. Did he say anything about other shippers? A. Yes, he said all of the other shippers have had to come to it.

Q. What do you mean by "come to it"? They had to confine their shipments to the Syndicate Lines? A. Yes.

Q. Did he say anything about any other shipper at that time who finally made an agreement?

MR. KIRLIN: Object to these statements of conversation with Mr. Taafe and others as incompetent. 5241

A. Yes, he said that a short time before, a few days, another shipper had written them a letter stating that they would come into line.

Q. Meaning by that? A. Meaning by that that he would only ship by the Syndicate Lines.

MR. KIRLIN: And Brazilian flag shippers.

MR. SPOONER: How did you know what he meant?

THE WITNESS: It was a continuance of the conversation that could have had absolutely no other meaning. 5242

Q. Did you see Mr. Perkins after you saw Mr. Taafe? A. Yes.

Q. What did you say to him and what did he say to you? A. I told Mr. Perkins what Mr. Taafe said.

Q. What did he say? A. He said he was sorry.

MR. BURLINGHAM: We object to that and move to strike it out, on the grounds already stated, and we object to any testimony of this character. 5243

Q. How many times did you see Mr. Perkins and Mr. Taafe with reference to these shipments after these two times that you have mentioned? A. Two or three times after that.

Q. Did you have any talk with them about your shipments or proposed shipments?

MR. BURLINGHAM: Same objection.

Q. With either of them? A. Yes, sir. 5244

Q. What was the subject of these conversations?

MR. BURLINGHAM: Same objection.

A. I asked if they had changed their minds.

Q. What did they say? A. No.

MR. BURLINGHAM: It is understood that all of this is taken subject to the objection, Mr. Baldwin?

MR. BALDWIN: Yes.

Q. Did you subsequently write to the firm of Davidson, Pullen & Company a letter with reference to the proposed shipments over their line? A. Yes, sir.

5245 Q. Was the letter sent to Davidson, Pullen & Company at that time first in Rio that you have mentioned? A. Yes, sir.

Q. Do you remember when it was? A. It was in May.

Q. What year? A. 1909; the same year.

Q. Did you keep a carbon or letter press copy of it? A. I did.

Q. Have you got it with you? A. No, sir.

Q. Have you any copy of it? A. Yes, sir.

Q. What did you do with the carbon copy, sent it to Ar-
5246 buckle? A. No, sir; I think not; I gave one copy to you.

Q. You kept a carbon copy of it, didn't you, or some copy of it? A. In a letter book.

Q. You haven't got your letter book with you, have you? A. Yes.

Q. You have it here? A. Not in this office. I have it up at the Holland House in my trunk.

Q. Well, Mr. Gray, I show you what purports to be a copy of a letter dated Rio de Janeiro the 22nd of June, 1909, addressed to Davidson, Pullen & Company, agents
5247 of the Prince Line, and signed Arbuckle & Company, Louis R. Gray; will you look at that and say whether or not that that is a copy of the letter? A. That is the copy, yes, sir.

Q. That is a copy? A. Yes, sir.

MR. BALDWIN: Now, I offer this copy, and if you have any objection as to its competency as an exhibit you look it over and——

MR. SPOONER: Is this the one of which you have the original at the hotel?

5248 THE WITNESS: I have the letter book with me and I am almost positive it contains that letter. I am almost sure. You would not let me say I think it is. I have a letter book up there which I am almost positive has that letter in it.

MR. KIRLIN: We have at present no information about this letter and we shall have to object to it on all grounds including insufficiency of proof and its competency and materiality.

The examination of the witness is suspended until the afternoon session for the purpose of providing him an opportunity to produce the letter book referred to.

SMITH T. BRYAN, being first sworn, testified as follows; 5249
the witness was called on behalf of the Petitioner:

DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Bryan, where do you reside? A. I may say I reside in Brazil. I have to be mainly between Rio de Janeiro and Santos according to the exigencies of the business.

Q. What is your business? A. I am an employe of Arbuckle & Company.

Q. In what capacity? A. I am manager as a rule.

Q. Of what? A. Managing one of the branch houses.

Q. At what place? A. I am in Rio during the time of 5250
the Rio manager's absence on vacation or in Santos during the Santos manager's absence on vacation, or in Victoria as the necessity in the business may arise.

Q. How long have you been with the Arbuckles down there? A. Since March, 1896.

Q. The Prince and the Lamport & Holt Lines have offices in Santos? A. They have agents in Santos.

Q. Who are the agents? A. F. S. Hampshire & Company, Limited.

Q. For which line? A. They are agents for the Lamport 5251
& Holt Line.

Q. Who is the agent for the Prince Line? A. For the Prince Line are Messrs. Zerrener, Bulow & Company.

Q. Now, Mr. Bryan, did you have any correspondence or do anything with reference to shipping coffee for Arbuckle & Company over the Lamport & Holt Line at Santos in 1910? A. Yes, sir.

Q. What was it that you did? A. I received instructions to try and ship coffee by the syndicate lines and I sent——

Q. Coffee to or for whom? A. From our Rio office. 5252

By Mr. Spooner:

Q. In writing? A. It was in writing.

By Mr. Baldwin:

Q. What, if anything, did you do after you received those instructions? A. I had a letter typed which I sent to the agents of the Lamport & Holt Line.

Q. Who is that? A. Messrs. F. S. Hampshire & Company.

Q. At what place? A. In Santos; and I had a similar

5253 letter typed to the agents of the Prince Line, Zerrener, Bulow & Company.

Q. In the same place? A. In the same place.

Q. Do you remember what year it was or what month and year? A. It was at the end of August, 1910, as well as I can remember, or the commencement of September—the end of August.

Q. Did you send any letters to them or either of these firms in September, 1910? A. September, 1910, I think; the commencement of September.

5254 Q. Did you keep copies of the letters that you sent? A. Copies were kept.

Q. Now, I show you what purports to be a—I show you a copy of a letter dated Santos, September 28th, 1910, addressed to Messrs. Zerrener, Bulow & Company, agents of the Prince Line, Santos? A. The 28th; that was the date.

Q. That was the date? A. That was the date I remember.

Q. Is that a copy of the letter that you sent? A. That is so; that is my signature.

5255 Q. I show you another of the same date, is that a copy of a letter you sent? A. That is a copy of a letter I sent.

Q. I show you another of September 30th addressed to Zerrener, Bulow & Company, is that a copy of a letter you sent? A. This is a copy of a letter I sent.

Q. I show you one addressed to F. S. Hampshire & Company, Limited, agents for the Lamport & Holt Line, Santos, September 30th, 1910, is that also a copy of one that you sent? A. That is a copy of one I sent.

5256 MR. BALDWIN: I offer the copy of the letter of September 28th to Zerrener, Bulow & Company, in fact, three letters under that date.

MR. KIRLIN: We object to them on the ground of insufficiency of proof of these being copies of any letters and insufficiency of delivery, immateriality and irrelevancy.

MR. BALDWIN: I call upon the defendant of the Prince Line to produce the originals of the three letters dated September 28th, 1910 that I have just now offered.

MR. KIRLIN: We resist the right to make demand upon the ground of want of proof of delivery of

any such documents such as referred to, and we have 5257
none to produce.

Marked Petitioner's Exhibits 265, 266 and 267.

Q. You had these typed? A. Yes, sir.

Q. And after you had them typed what did you do with them? A. They were delivered by an employe in the confidence of the firm into the hands——

MR. KIRLIN: Objected to as calling for a conclusion.

5258

Q. Delivered by hand? A. Yes, sir.

Q. You gave them to an employe of the firm to take around and deliver to Zerrener, Bulow & Company? A. Yes; and the office happened to be almost directly across the street from our own and it was the most direct way of their receiving our letter.

Q. You never received back the originals, did you, that you sent; they never came back to you? A. The originals never came back to us.

Q. Did they every receive or take the coffee upon the 5259
terms proposed in these three exhibits I have now offered? A. No; they never gave us any chance of shipping coffee by their boats.

Q. This employe you sent them over by was one who had been in the employ of the company for some time? A. The reply said the manager would come over and speak to us.

Q. That is, your employe returned and said the manager would come over and see you? A. Yes.

MR. KIRLIN: I object to the report of the employe 5260
as incompetent and move to strike it out.

Q. Do you remember the name of the employe? A. I could not remember exactly which, but the fact of the matter remains that the manager, Mr. Noblin, of Zerrener, did come over personally to reply to the letter.

Q. He didn't come, did he? A. He did come; came that same day.

Q. Did you have a talk with him? A. Yes, sir.

Q. What did he say?

MR. KIRLIN: I object to the conversation as the authority and credentials are not proven.

5261 Q. Did any person come from the office of Zerrener, Bulow & Company after you sent this letter, these three exhibits? A. Yes, Mr. Noblin, who I believe is a member of the firm, and he was practically taking charge of the steamer department at that time owing to the absence of the usual manager, Mr. Wright, who was absent from Santos.

Q. Who was the person who came over from the office of Zerrener, Bulow & Company? A. Mr. Noblin.

Q. How long had you known him? A. I have known him
5262 a great many years.

Q. Has he always been identified with the office? A. Yes, he has been a member of the firm of Zerrener, Bulow & Company.

Q. And you had often been in the office yourself? A. Yes, sir.

Q. Saw him in the office? A. I have seen him in the office.

Q. Was he habitually engaged in the office? He was not around there just simply as a visitor or anything of that
5263 kind, was he? A. I have called on him at different times at his office and he always had time to speak to me, but on this occasion he came around to our own office.

Q. I want to bring out, Mr. Bryan, just what you know of his being either a partner of this firm or what he had to do with running the business of that agency of the Lamport & Holt Line? A. Excuse me, not the Lamport & Holt Line.

Q. I mean the Prince Line? A. I know that he was taking charge of the steamer department at that time, and I was referred to him by the clerk in their employ when
5264 I called.

Q. How long after you sent this letter by messenger did he come into your office? A. He came on the same afternoon.

Q. What did he say?

MR. KIRLIN: I object to what he said on the ground that it is no competent proof of his authority or his relation to the firm of Zerrener, Bulow & Company.

A. With regard to requests for room, he was very sorry

that he hadn't got any room available by the steamers we 5265
ask for as the room was in the hands of the regular shippers by the line; it was all given out and he had no room to give away. I suggested in the event of any room being given up if he could—he said he didn't think there would be any room given up, but in any case he could not give it to us without consulting the agents of the syndicate lines in Rio de Janeiro.

Q. Then he did not take any of these shipments which you offered in these letters? He did not receive them? A. Beg pardon? 5266

Q. They did not take any of these shipments? A. He would not take any of our cargo.

Q. After he came in did you write him again with reference to your shipments? A. Yes, we continued to apply right along, I think all through the year, or several times; several steamers.

Q. Did you send any communications with reference to the shipments of your coffee in the same month to the Lamport & Holt Line? A. We applied also for room.

Q. By letter? A. By letter. 5267

Q. I show you one which purports to be a copy of a letter of September 30th, 1910, is that copy one? A. Yes, that is a copy with my signature.

Q. How did you send that, the original of this? A. It was delivered by hand.

Q. Where was the office of Hampshire & Company? A. The Office of Hampshire & Company was in Rua 15th of Novembre.

Q. Was it sent by a messenger in the employ of your firm? A. We sent it in the customary way done by all 5268
letters delivered.

Q. Did you get any response? A. We got no reply.

Q. Did the original come back in any way? A. No, we never had anything returned to us.

Q. Did any message come back by the messenger? A. The message came back, "it is delivered"; that was all.

Q. Hampshire & Company, they occupy a building there? A. They occupy a building, yes.

Q. What you stated here of the agents of the Lamport & Holt Line, are they the advertised agents of the Lamport & Holt Line? A. Advertised agents of the Lamport &

5269 Holt Line; they advertise the sailing of the steamers and for information apply to F. S. Hampshire & Company.

Q. And you sent this letter to their address? A. Yes, sir.

Q. You know they were the people who do the business? A. Perfectly well.

MR. BALDWIN: I offer this letter in evidence.

MR. BURLINGHAM: We object on the same grounds as those taken by Mr. Kirlin.

MR. BALDWIN: I call upon the Lamport & Holt Line to produce the original of which this purports
5270 to be a copy.

Letter marked Petitioner's Exhibit 268.

Q. In this Exhibit 268, which is the letter of September 30th, 1910, Mr. Bryan, I note that this statement is made: Reply made to our letter of the 28th instant asking you to reserve freight room for the October ship; had you sent another letter—you must have sent another letter before that? A. We sent a letter on the 28th; on the identical date we sent one to Zerrener, Bulow & Company.

5271 Q. That is the Prince Line Agents? A. Yes. The same date we sent a similar letter, a similarly worded letter.

Q. And you got no response? A. We got no reply.

Q. You got no reply from them and they did not take your coffee? A. No.

Q. You had coffee there ready to tender for delivery? A. Yes; we had coffee ready to ship.

MR. BURLINGHAM: Objected to as leading.

Q. Do you remember at any time when you were in
5272 Rio making any offer of shipments to the agents of the Prince Line and the Lamport & Holt Line? A. Yes, I think about every week.

Q. You remember the year? A. 1911.

Q. Reverting back a moment, Mr. Bryan, to your letter to these two firms in Santos, do you know the partners of F. S. Hampshire & Company? A. Yes, Mr. Smith.

Q. After you sent those letters in December, 1910, did you have any conversation with Mr. Smith? A. Not directly in his own office.

Q. Did you have any talk with him anywhere? A. I had met him at the club.

Q. Wherever you may have had the conversations, did you have any? A. I did. 5273

Q. About this coffee? A. Yes. I remember on one occasion saying to him, asking him if he considered——

MR. BURLINGHAM: I object to this on the ground that it is not shown he had any authority.

A. It was a case of pulling each other's legs, as it were. I was chaffing with Mr. Smith about this thing and I said to him, what kind of a firm are you anyway, you don't follow the ordinary courtesies of business matters by replying to letters that you receive. 5274

Q. What did he say? A. He got very much annoyed about the matter and got up and left the chair and exclaimed, "I'll tell you, what is more, you will not get any."

MR. BURLINGHAM: Move to strike it out.

Q. This was after? A. This was after.

Q. Did you say anything to him about having sent letters tendering freight? A. Yes.

Q. Just state as near as you can and just as accurately as you can what was the conversation? 5275

MR. BURLINGHAM: Same objection.

Q. What you referred to and what you mentioned? A. I said that we got no replies to letters we sent him.

Q. About what? A. About freight, and he did not comply with the ordinary courtesies of business in not replying to our letters, and he suddenly got up and left the table and said, "well, I'll tell you more, you will not get any, that is all I've got to say in the matter." That is exactly word for word that took place. 5276

Q. And this was immediately or shortly after you had sent these letters? A. It was sometime afterwards.

Q. Now, coming down to the tenders to Davidson, Pullen & Company.

MR. KIRLIN: We object to the characterization "tenders."

Q. You were in Rio in July, 1911, weren't you? A. Yes, sir.

5277 Q. Looking after the affairs of Arbuckle & Company? A. Yes, sir.

Q. Did you at that time have occasion to send any written communications to Davidson, Pullen & Company? A. I did.

Q. And they are the agents of the Prince Line in Rio? A. Yes, sir.

Q. Did you have any communication with Messrs. Norton, Megaw & Company, the agents of the Lamport & Holt Line? A. I have.

5278 Q. With reference to the shipment of coffee, is that right? A. Yes, sir.

Q. Now, I show you as part of Exhibit 230, a copy of a letter of the 22nd of July, 1911, addressed to Davidson, Pullen & Company and Messrs. Norton, Megaw & Company of date of July 22nd, 1911, agents of the Lamport & Holt Line, and ask you if those are copies of the letters that you have spoken of? A. Those letters were written and signed by me.

Q. These are copies, aren't they? A. The copies.

5279 Q. What did you do with the originals? A. The originals were delivered.

Q. How were they delivered? A. Delivered by hand. There is testimony there showing how they were delivered.

Q. That is, you delivered them by some person connected—— A. By our cashier.

Q. What is his name? A. Bargerth.

MR. BALDWIN: I offer these two letters of the 22nd of July, 1911, as separate exhibits in connection with this witness' testimony.

5280 MR. KIRLIN: The defendants object to the letters on the ground of insufficient proof of their being copies or their being delivered and immateriality and incompetency.

MR. BALDWIN: I call upon the Lamport & Holt Line and the Prince Line to produce the originals of which those purport to be copies.

Marked Petitioner's Exhibits 269 and 270.

Q. These two copies that you have just identified, do you know whether or not you sent them on to Arbuckle & Company here in New York? A. They were sent to Arbuckle Brothers in New York.

Q. And the letters that you sent of which those are 5281
copies were sent to the Arbuckles here in New York, the other three in Santos? A. Yes.

Q. As a part of Exhibit 230 there is a typewritten statement signed by L. Bargerth; I ask you to look at it and state whose signature that is? A. That is the signature of our cashier in Rio.

Q. That is the man you said took over these two letters? A. Yes, who delivered the letters.

Q. You are familiar with his signature, aren't you? A. Yes. 5282

Q. And you know that to be it? A. Yes.

Q. The originals of Exhibits 269 and 270 you never got back, did you? A. We never saw them again.

Q. Did you have any conversation with any person connected with either one of those two firms after those letters were sent? A. You mean in Rio de Janeiro?

Q. Yes? A. No, I had none.

Q. You spent a good deal of time, I suppose, on and off in Rio? A. A good deal.

Q. And you know who Davidson, Pullen & Company 5283
purported to be, didn't you? A. Perfectly well.

Q. They advertised as agents for the Prince Line? A. They advertised as agents for the Prince Line.

Q. Notifying of dates of sailing and the ships and so forth of that line? A. Exactly.

Q. And if a shipper in Rio wanted to make a shipment over the Prince Line boats where would he have to go, in 1911? A. He would apply to Messrs. Quail, Davidson or their broker, Mr. Peck.

Q. You mean Davidson, Pullen & Company? A. David- 5284
son, Pullen & Company. I was thinking of the former style of firm; it used to be before it was Davidson, Pullen & Company, Quail-Davidson.

Q. How long ago was that? A. Up to the death of Mr. Quail; I cannot remember exactly now. I think it was about 7 or 8 years ago.

Q. Do you know the members of the firm, the personnel of the firm? A. I knew them personally, yes, sir.

Q. You do? A. That is Mr. Pullen I know; Mr. David- son lives or resides in London and I have known him at one time, but it is many years since. I do not think he has been in Brazil in the last 20 years.

5285 Q. Any other ostensible office of the Prince Line in Rio for the purpose of shipment? A. No, none.

Q. And if you want to make any shipments of any kind by the Prince Line there is where you would have to go? A. Go to the shipping office.

Q. And these letters were directed to them at their place of business? A. At their place of business, yes.

Q. You say Mr. Peck was the broker? A. Is the freight broker, but Mr. Taafe is the manager of their shipping department.

5286 Q. Do you know the firm of Norton, Megaw & Company, Limited? A. Very well.

Q. What do they hold themselves out to be ostensibly? A. As agents for the Lamport & Holt Line.

Q. Advertise themselves as agents for the Lamport & Holt Line? A. Advertise themselves as agents of the Lamport & Holt Line.

Q. Did they have more than one place of business in Rio? A. No; they have only one office.

Q. If a shipper wanted to ship over their line where would they have to go? A. To their building in the Rua 5287 de Março.

Q. Just one place? A. Just one place.

Q. How long have you known them? A. I have known them since I have been in Brazil, about 33 years.

Q. And all of that time they have been advertising—— A. All of that time they have been agents of the Lamport & Holt Line.

Q. Did you have coffee down there to be shipped at the time these tenders were made? A. Yes, we had coffee.

Q. Were those tenders made under the instructions 5288 from New York? A. We followed closely instructions received from New York.

Q. That is the home office of Arbuckle & Company here? A. Yes, sir.

Q. Do you know Mr. Perkins? A. I know him personally, yes.

Q. Where did you usually see him? A. Oh, I met him at the club.

Q. Did you ever meet him in a business way? A. I have met him in a business way.

Q. In what office? A. In his own office.

Q. His own office? A. Of Messrs. Norton, Megaw & Company; he is the manager of the steamer department.

Q. To your knowledge he has been that manager for 5289
how long? A. He has been that manager for the last seven or eight years, but how long I really could not say. I do not remember. I did not keep a note of the date. But he has been manager since Mr. Sturdy retired, and at least the last five or six years.

Q. And you have often been in the office of Norton, Megaw & Company which you call his own office, frequently? A. Frequently.

Q. Do you know Mr. Taafe? A. Yes, I know him very well. 5290

Q. Now, tell us what you know about Mr. Taafe, who he is, where you see him and what his business is? A. I think Mr. Taafe has been out in Brazil for fully over ten or fifteen years, and I think he has been always an employe of Quail, Davidson & Company; he was of Quail, Davidson & Company when the style of the firm was when he entered it, now Davidson & Pullen; he has been with the firm all of these years and his department has been in the shipping of which he has charge.

Q. You have seen him in there? A. I have seen him in 5291
there and spoke to him frequently about things like that in his own office.

Q. Mr. Bryan, you come from Brazil here, or were you on your way through here? A. I came from Brazil via Euope; I have been for the past three months in Europe.

Q. And you are on your way back? A. I am on my way back to Brazil.

Q. Do you know whether or not, Mr. Bryan, there were any other letters written where there were tenders of coffee shipments made to either one of these lines by you while you were in Rio? A. While I was in Rio, yes, sir. 5292

Q. More than these two that are in evidence here? A. Yes.

Q. I show you a letter addressed to Davidson, Pullen & Company dated July 3rd, 1911—July 3rd, 1911, copies of letters rather—and a letter of the 19th of June, 1911, to Norton, Megaw & Company, the Lamport & Holt Line, did you send the letters on those dates of which these are copies? A. Yes; those are all my letters and my signature.

Q. And they were all sent to—— A. All sent.

Q. And in this case do you remember how they were

5293 sent? A. Our confidential clerk in our Rio employ at that time, Mr. Bechtinger.

MR. BALDWIN: I offer these three letters in evidence.

MR. KIRLIN: They are objected to on the ground of want of proof of credentials and want of proof of delivery, immateriality and incompetency.

MR. BALDWIN: I call upon the two defendant companies to produce the originals of which they purport to be copies.

5294 MR. KIRLIN: We are unable to produce.

Marked Petitioner's Exhibits 271, 272 and 273.

Q. Now, I show you what purports to be two sheets connected with this exhibit, a statement by Charles M. Bechtinger; do you know his signature? A. Yes, that is his signature.

Q. You say he is a clerk, confidential clerk in your employ at that time? A. He was head clerk.

MR. KIRLIN: To make it quite clear, we renew our
5295 objections to these certificates as incompetent.

MR. BALDWIN: In connection with the testimony I will offer them for what they are worth.

MR. KIRLIN: I object to them as incompetent.

Marked Petitioner's Exhibits 274 and 275.

Q. I show you letter dated the 20th of April, 1911, addressed to Norton, Megaw & Company, agents for the Lamport & Holt Line; another of the 28th of April addressed to Davidson, Pullen & Company, agents of the
5296 Prince Line, and ask you if you sent the originals of which those are copies? A. Yes, sir.

Q. Addressed in the same way to the respective places of business? A. Yes.

MR. BALDWIN: I offer those in evidence.

MR. BURLINGHAM: We make the same objection.

Marked Petitioner's Exhibits 276 and 277.

Q. And there seems to be a typewritten statement signed by Charles Bechtinger, is that the same Bechtinger and his handwriting? A. Yes.

Q. Is he the messenger you employed to do that? A. He delivered the originals.

MR. KIRLIN: We object to the statement he delivered the originals and also object to the statement in typewriting, and we object to the admissibility of the letters on account of want of proof, being copies, and want of delivery, immaterial and irrelevant. 5297

MR. BALDWIN: I call upon the defendants to produce the originals of which they are copies.

Q. I show you two letters dated May 10th, 1911 and 12th, respectively, first to Norton, Megaw & Company and the other to Davidson, Pullen & Company; did you send those or the originals of which those two are copies? A. Yes. 5298

Q. By what messenger? A. Sent by the same messenger as the other three letters.

Q. Look at them and see which one it was that was sent with them? A. Yes, Mr. Bechtinger; these are copies of the originals.

MR. BALDWIN: I offer these in evidence.

MR. BURLINGHAM: Same objection.

MR. BALDWIN: I make the demand upon the defendants to produce the originals of which these two letters are copies, or purport to be copies. 5299

MR. KIRLIN: Objected to on the same grounds as the others.

Marked Petitioner's Exhibits 278 and 279.

Q. Now, I also show you what purports to be a typewritten statement signed by Charles Bechtinger, is that his handwriting? A. Yes, that is his signature.

Q. Do you know that? A. Yes.

MR. BALDWIN: I offer them both. 5300

MR. KIRLIN: Objected to as incompetent.

Marked Petitioner's Exhibit 280.

Q. Where is Mr. Bechtinger now? A. He is no longer in the employment of Arbuckle & Company; he is in Brazil at the present time; he is working for himself as an Exchange broker.

Q. What became of Mr. Bargerth? A. He is still our cashier.

Q. Still with you? A. Still in the employ of Arbuckle & Company, Rio de Janeiro.

5301 Q. And he is in Rio at the present time? A. In Rio.

Q. None of these tenders were accepted? A. None.

Q. You had coffee at all times? A. We had coffee at all times ready to ship.

Q. Do you know of any shipment being accepted by any of the conference lines of Arbuckle & Company from any Brazilian ports to New York or American Ports since 1906—say from 1910 down, any shipment? A. Any shipment made by us?

Q. Yes? A. No, I know of none.

5302 Cross-Examination by Mr. Spooner:

Q. You say that you wrote these letters pursuant to instructions, strictly conforming to the instructions from New York? A. Yes, exactly.

Q. From your principal? A. From our head office in New York, Arbuckle Brothers.

Q. What were your instructions? A. Tender coffee to the syndicate lines; try and ship coffee by the ships of syndicate lines. We had coffee which at the time we were
5303 trying to ship and we were instructed to try and ship that coffee by the syndicate lines.

Q. From 1901 to 1909 had Arbuckle Brothers shipped any coffee by these lines to your knowledge? A. To my knowledge since 1909 we shipped mainly outside the syndicate lines. I believe a few shipments were made; I don't remember when, about in 1906, by steamers of the syndicate lines.

Q. But in the main they carried their coffee by chartered ships, don't they? A. By chartered ships and by steamers
5304 of the Lloyd Brazileiro, which were outside the combination.

Q. But on chartered ships they carried not only Arbuckle coffee but coffee for others, did they not? A. I remember no occasion when they carried coffee for anybody but ourselves on our own chartered steamers.

Q. But it might have been done and you not know it, might it not?

Mr. Baldwin: I object to speculation. The question is not what might have been done, but what was done.

A. While I was in Brazil none was shipped—while I 5305
was in Brazil for the firm. I might have been on a vacation during that period several times, but while I was in Brazil no coffee was shipped in a chartered boat of our own outside of our own firm's.

Q. You are sure of that? A. I am sure of it.

Q. You were still carrying at the time these offers were made, or these letters were written, by chartered ships, were you not, your own coffee? A. When we had accumulated—we could not ship coffee by syndicate lines, and we would accumulate it and then we chartered a steamer of 5306
our own for a time; we did charter a steamer at the time we shipped by the Lloyd Brazileiro Line.

Q. How much coffee—these were pretty small offers or requests, aren't they? A. If we had been able to get any advices about being able to ship them we might have tendered more.

Q. You might have had much more to tender, might you not? A. We had more to tender.

Q. You had a great deal more you wanted to carry at the time these letters were written, didn't you? A. We 5307
could have; it would have suited us if we had been able to place more coffee.

Q. You had a great deal more coffee to ship to New York at the time these letters were written than you had space for? A. We had more to ship to New York than we tendered them.

Q. You did not tender them, but you asked for space? A. Asked for space.

Q. Why did you limit these offers, or these requests for space, to 5,000? A. To suit our own business at the time.

Q. And one 500 bags; what was your answer? A. To 5308
suit our business at the time; to suit our own requirements.

Q. You mean that you did not require more space than 5,000? A. Not by that steamer.

Q. Why not by that steamer if it had the space? A. Well, it is a detail of business, that is all.

Q. If you had 50,000 bags to send? A. We might not want to ship the 50,000 bags, all of that on one boat.

Q. At the time you offered 500 bags how much coffee do you suppose you had on hand? A. I could not truthfully say how many bags we had on hand on that date. That

5309 is impossible for me to say, but we had 500 bags I will guarantee.

Q. Isn't it a fact that these requests were made for the purpose of getting a refusal in order to lay the foundation for a lawsuit? A. I am not acquainted with any motive; I am acquainted we had the coffee to ship and we wanted to ship it.

Cross-Examination by Mr. Kirlin:

Q. I notice that you sign these letters for Arbuckle &
5310 Company, who were Arbuckle & Company? A. Arbuckle & Company is the style of the firm that Messrs. Arbuckle Brothers do their business in Brazil.

Q. Is that a registered partnership or is it a corporation there? A. It is a similar corporation to the New York concern. According to the Brazilian Law they could not register under the name of Arbuckle Brothers because according to the Brazilian Law there was at the time only one Arbuckle in the firm, so they could not register in Brazil as Arbuckle Brothers, so they registered as Ar-
5311 buckle & Company.

Q. Was there any company in Brazil? A. The members of the firm are the same as in the firm of Arbuckle Brothers.

Q. Now, at the time you wrote those first letters from Santos, it appears from the language of the letters that you did so on cable instruction; have you got those cables? A. Instructions were received from Rio, who received the cable instructions from New York.

Q. Can you produce the cable instructions on which you
5312 wrote those letters? A. I cannot; I haven't them here. They may be here.

Q. Have you any recollection about what the general terms of your cable was on which you wrote these four letters, Exhibits 265, 266, 267 and 268.

Mr. Baldwin: May I call your attention to the fact he testified he received his instructions from the Arbuckle Company at Rio and not from New York.

Mr. Kirlin: Yes, I remember that.

Q. What is your recollection of the instructions upon

which you wrote these four letters? A. Information from 5313
Rio to the effect that Arbuckle Brothers in New York instructed us to tender room for shipments by the Lamport & Holt and by the Prince Lines.

Q. Was the number of bags within the scope of your instructions? A. I don't remember the exact number of bags, but what we could ship—what we had ready to ship at that time.

Q. Do you remember how much coffee you had ready for shipment September, 1910 at Santos? A. I could not exactly say the exact number of bags; it was probably over 5314
10,000 bags.

Q. Arbuckle Brothers accumulate their coffee in warehouses there, do they, or did they at that time? A. In warehouses, yes.

Q. And there was coffee there in quantity that you cannot say, but it was over 10,000 bags? A. That is so.

Q. They had their own warehouses at Santos? A. We have a private warehouse of our own, but it has not the capacity of more than about 8,000 bags. We generally store in public storehouses; dock storehouses. 5315

Q. Do you remember how recently you despatched a chartered steamer from Santos or Rio that loaded at Santos; I mean recently, before the 28th of September, 1910? A. I could not remember at the moment.

Q. You were sending chartered steamers at that time as the accumulations of coffee permitted you to do, weren't you? A. Yes, sir.

Q. And whether you had shipped shortly before that or whether you had enough for another load you do not now recall? A. I could not recall.

Q. You were also shipping at the same time by the Lloyd 5316
Brazileiro steamers in small parcels, were you? A. Yes.

Q. What became of the 5,000 bags that were tendered—— A. We were obliged to ship it by some other way, by the Lloyd Brazileiro.

Q. They were shipped by one of those—either by a chartered ship or by the Lloyd Brazileiro? A. Yes, sir.

Q. And when I suppose you cannot say? A. I could not, sir.

Q. Can you tell us anything about the rates; have you any recollection about rates at that time for chartered steamers, the rates of freight? A. The rates of freight

5317 were not in the province of the Santos houses; it was determined by the Rio house or by the New York house or instructions received from the New York house by the Rio house what rate of freight it was arranged upon.

Q. You do not charter steamers yourself? A. No.

Q. Are they chartered in Rio or in New York? A. The business was generally done by cables through New York and London.

Q. Was the amount that you were asked to place for any of these Exhibits 265, 266, 267 or 268, as you say, fixed
5318 in New York, Rio or in Santos—the number of bags for which you asked reservation of space fixed in New York, Rio or in Santos? A. It depends on the number of bags suited to be shipped that we had reached and that we could place.

Q. I want to know who determined this number of 5,000 bags that you put in these letters, New York, or Rio or Santos?

MR. BALDWIN: My recollection is that 5,000 is an aggregate, is that the idea?

5319 MR. KIRLIN: No, it says 5,000 each one.

A. The tender was made under instructions received from Rio.

Q. Did that include the number of bags you were to ask space for? A. It did.

Q. Were these two letters requests for space for 10,000 bags, or was it a sum of 5,000 bags covered in both letters? A. I should say it was—it was sometime ago, I cannot quite recall, but we had more coffee than that there and we could
5320 have shipped by both steamers if we had got the room for it. We could have shipped 5,000 bags in each ship if we had got the room given us.

Q. Are you able now to say positively that you had 10,000 bags? A. I am.

Q. Are you able to say how many you had? Will you put a limit on how many you had at that time for shipment; I mean outside of your other commitments, of course, free bags? A. I could not say the number of bags. I know we had more than 10,000 bags.

Q. Did you have 15,000? A. I cannot say.

MR. BALDWIN: He has already said he could not 5321
tell how many they had.

THE WITNESS: I would say we had over 10,000 bags.

Q. You cannot say you had as many as 15,000; do you say no? A. I cannot remember.

Q. And you have no means of telling us now when or by what means those bags of coffee were shipped that you say you had ready for shipment over and above your other commitments? A. I could not say when they were shipped, 5322
no.

Recess taken until 2:10 o'clock P. M.

AFTERNOON SESSION.

SMITH T. BRYAN, recalled.

CROSS-EXAMINATION continued by Mr. Kirlin:

Q. What was your method of accumulating coffee at Rio de Janeiro; did you have your own warehouses? A. We have our own warehouses in Rio de Janeiro. 5323

Q. Have they a large capacity? A. They have a large capacity.

Q. How much altogether? A. Well, it depends greatly on how it is stowed; it goes up to 55,000 bags.

Q. At the time these letters were written and in April or May, 1911 and July, 1911, to the Rio offices of the Lamport & Holt and Prince Lines, had you coffee on hand? A. We had coffee in warehouses.

Q. How much? A. I could not say.

Q. A large quantity or a small quantity? A. A cargo 5324
sufficient for any requirement of room that we asked for.

Q. You asked for a very small space; did you have a small amount of coffee? A. As I said before, I could not say exactly what amount of coffee we had.

Q. Can you give us any idea at all of how much you had? A. I cannot say.

Q. Up to the time the last of these letters was written in 1911 you continued to ship by chartered vessels, had you? A. We had shipped by chartered vessels, but not all; we shipped by——

Q. By these two other means? A. By the other line.

5325 MR. BALDWIN: You mean the Lloyd?
THE WITNESS: The Lloyd Brazileiro.

Q. The chartered ships and by ships of the Lloyd? A. Yes, sir.

Q. Were the rates that were offering by the syndicate lines, as you call them, lower for shipments at the time these Santos and Rio letters were written in 1910 and 1911 than the rates that were being offered by the Lloyd Brazileiro and which you could obtain by chartering ships?

5326 MR. BALDWIN: I object to that as not pertinent to the direct, and on the further ground that it asks for a conclusion; what the rates were on respective lines would be the best evidence and I want the examination on the subject matter now covered by this question to be not a part of the cross, but to make him your own witness; I asked no question on that

(Question read.)

MR. BALDWIN: If you know.

5327

A. From our point it was not a matter of conference; it was the facility of shipment, being able to ship. The Lloyd Brazileiro was not taking coffee to New Orleans.

Q. Only one of these tenders seems to have related to New Orleans as far as I have noticed? A. There may be several tenders that were made.

Q. A very small portion of them indeed related to New Orleans; most of them related to New York, didn't they?

MR. BALDWIN: Mr. Kirlin, if you recall, he said
5328 there were many more than we have the copies of; he said they were made right along.

MR. KIRLIN: I want to find about most of these.

Q. Most of these that were put in evidence this morning relate to New York, do they not? A. New York and New Orleans.

Q. Most of them relate to New York, do they not; there is only one in Santos that relates to New Orleans——

MR. BALDWIN: Here are several other copies I have here; perhaps I had better put them in now.

By Mr. Baldwin: 5329

Q. Are these copies of two letters that you sent? A. These are copies. (After examination.)

Q. The original you sent the same way as before, by either one of these messengers? A. Yes.

MR. BALDWIN: I offer these in evidence.

MR. BURLINGHAM: We object to them on the same ground as before.

MR. KIRLIN: We object to these on the same ground.

Marked Petitioner's Exhibits 281 and 282. 5330

By Mr. Kirlin:

Q. The requests for reservations to New Orleans was because there was no other service to New Orleans? A. There was no service offering at the time, except by the syndicate lines.

Q. How were you making New Orleans shipments during that period? A. We were unable to make any on account of not being able to ship.

Q. You could charter ships to New Orleans, couldn't 5331
you? A. We were not going to charter a ship to carry 60,000 bags to ship 5,000.

Q. You could ship a load to New Orleans I suppose? A. We would have to sell it first; we would have to get orders for the shipment of it.

Q. Hadn't you sent any shiploads to New Orleans while you were operating chartered ships? A. We had.

Q. Full loads? A. Not full loads. We have chartered ships for New Orleans and discharged the balance of the cargo at New York. 5332

Q. You had done that before you wrote these letters and you have done it since, haven't you? A. We had done it before.

Q. And have done it since? A. I think not.

Q. Were the rates of the lines to New Orleans more favorable than the rates which you could get by chartering ships to carry your cargo to New Orleans on voyages from Rio to New York? A. The rates by the syndicate lines?

Q. Yes? A. They were not more favorable.

Q. Were not more favorable? A. The facility of being able to ship was necessary to us to do business with those ports.

5333 Q. What I want to know is, could you get coffee down to New Orleans cheaper by shipping it during this period of 1910 and in 1911 on syndicate lines than you could by shipping on chartered vessels that were to call both at New Orleans and New York, or was it to New Orleans alone? A. The matter of the cheapness depended entirely on the quantity we would be able to accumulate, and ship. If they were not able to have sufficient cargo to charter a steamer it would naturally be very much more expensive to charter to take a small quantity than the freight offer-
5334 ing by the syndicate lines.

Q. Take the other case; how would it work out then; this is where you are accumulating for New York and New Orleans and there has been no ship, could you lay down the New Orleans part of it on that kind of a voyage as cheaply as the syndicate lines were carrying it to New Orleans? A. It was entirely a matter outside of my province. The matters of freight were not arranged by the firm in Santos or Rio at the time.

Q. But you wrote a lot of these letters at Rio; wasn't
5335 that within your province? A. It was done under instruction to procure freight there. We were carrying out instructions.

MR. MONTGOMERY: I don't think that question is clear, Mr. Kirlin. Do you mean what he did was under his authority?

Q. Yes, when you were in Rio; at Santos you say you worked under orders from Rio, but when you were in charge of the Rio office were these letters written on your own initiative or by direction from New York? A. In ac-
5336 cordance with instructions we always had to try and be able to ship by syndicate lines so that if our firm offers to them were accepted for New Orleans freight we could ship that way.

Q. Did New York telegraph to you during this same interval to obtain reservations of room for 500 bags or other number of bags on Lloyd Brazileiro ships, or was that done under your own initiative? A. It was done according to instructions that we had received.

Q. That does not answer the question at all. (Question read.) A. It was done in compliance with previous in-

structions that we had and were carrying along all the 5337
time; when we had coffee we had to ship it if we could by the syndicate lines.

Q. And the general instructions related to the Lloyd Brazileiro, did they not?

MR. BALDWIN: There has been no evidence given of that.

A. There were not any general instructions regarding the Lloyd Brazileiro.

Q. Could you ship cargo without instruction from New 5338
York on any line, or did you have instruction with regard to every shipment? A. We had instructions to ship coffee. If we offered coffee for prompt shipment we had to try and ship it as soon as we could.

Q. That answer there does not mean much to me. (Question read.) Did not the New York office tell you what lines to ship by? A. We had instructions from the New York office to ship by certain lines if they would take our coffee. We tendered freight on every available occasion when we had coffee to ship. 5339

Q. What did they tell you at the New York Office about shipping on the Lloyd Brazileiro? A. When we were unable to ship by them we consulted them shall we ship by the Lloyd Brazileiro, and if we did we were so instructed.

Q. How do you leave it? Did you have special instructions to try to make your shipments on the syndicate lines or did you make those efforts in pursuance of general instructions to try to get the coffee forwarded to New York? A. I followed the instructions that were in vigor at that time.

Q. Still you do not answer the question? 5340

MR. BALDWIN: I submit that is an answer.

(Question read.)

A. I followed standing instructions regarding the shipping of coffee by syndicate lines if they could make it.

Q. Where are those standing instructions; are they in writing? A. They were instructions received by the Rio office when I was in Santos, and when I returned to Rio in charge of the Rio office I continued the regime as it had been going on before.

5341 Q. You have told us that you made those requests for room in Santos in pursuance of specific instructions, haven't you? A. Yes, those instructions emanated from Rio when I was in Santos. The instructions the Rio office pursued emanated from New York.

Q. When you got back to Rio did you find instructions there, specific instructions, to make a request for room on the syndicate lines similar to the instructions which you had received at Santos? A. I carried on the system as I found it in vigor there.

5342 Q. You still do not answer the question; the question was whether you when you got to Rio found specific instructions there similar to the instructions you have testified were given to you at Santos? A. Yes, I found the same there.

Q. Now, so far as the New York coffee is concerned were the rates that were being offered by the syndicate lines any more favorable, or less favorable, than the rates that were being offered by the rival lines, or by the chartered ships?

5343 MR. BALDWIN: I object to that as not pertinent to the direct and not proper cross-examination, and you make the witness your own, and I also object further to his conclusion as to whether it is favorable or unfavorable.

Q. Just answer, Mr. Bryan?

MR. BALDWIN: Do you understand the question, Mr. Bryan?

THE WITNESS: I understand the question, yes.

5344 A. But it is a difficult one to reply to, because it depends greatly on circumstances; the rates by one line may be cheaper, but it may take a longer time to ship coffee by that; uncertainty as to date of sailing among other things, so that it is entirely a matter outside of our—if we had to be tied down to shipment under a certain date and I could not get a steamer from another line, it may suit us to pay a higher rate of freight and ship by another line.

Q. Which rates were more favorable, syndicate rates or the rates of the rival lines?

MR. BALDWIN: If you know?

Q. Or the rates of vessels for charter—during 1910 and 5345
1911 I am speaking of? A. The freights offering at the time or scheduled by the syndicate lines, they were ruling in that year higher than the rates by the Lloyd Brazileiro.

Q. How much higher? A. That could be easily seen, but I do not remember exactly the rates of freight.

Q. There was a very small difference, wasn't there? A. What the difference exactly was I could not state. I know the difference was——

Q. Negligible?

MR. BALDWIN: I object to the question negligible. 5346
If he doesn't recollect it, what it is, he cannot characterize it as negligible or to the contrary.

Q. As a business matter was it an important difference?

MR. BALDWIN: I object to that.

A. As I said before, I could not tell you exactly the difference in cents per bag, but it was some difference.

Q. Do you mean to convey the impression that the syn- 5347
dicate lines' rates were higher than the others? A. I should think they were at the time.

Q. Why did you want to ship on the syndicate lines? A. So that we would be able to ship coffee.

Q. Was it that the service was better, more regular, more frequent?

MR. BALDWIN: I object to that as not pertinent.

A. Not necessarily. There was nothing to complain about about the service, but we had to be shipping to New 5348
Orleans.

Q. Or was it because you wanted to test the question of your right to ship coffee? A. That was a matter that does not at all belong to my troubles.

Q. You know that was the real reason, don't you?

MR. BALDWIN: I object to that. Unless he knows of his own personal knowledge what the intent and purpose was in the minds of those who gave instructions from New York he cannot testify.

A. That is a matter that I cannot answer.

5349 Q. Do you mean you do not know, or will not say? A. I have not sufficient data.

Q. What did you mean by saying a little while ago you wanted to have better facilities, or wanted to have facilities? A. We wanted to have facilities.

Q. Weren't the other facilities adequate?

MR. MONTGOMERY: To New Orleans you mean?

MR. KIRLIN: Anywhere.

A. If the facilities had not been adequate, we probably
5350 wanted fuller facilities.

Q. Do you know that now, or is it a matter on which you presume? A. I presume that was the idea.

Q. What do you presume about the question I asked you a moment ago? A. I don't know. I have made myself very clear.

Q. Well, unless the lines were offering better facilities, that is, the conference lines, and rates they were, counting the saving of time and whatever incidental savings there were, as favorable on the whole as the service which could
5351 be rendered by the outside lines, what object can you see that your employers could have in wanting to ship by the conference lines?

MR. BALDWIN: I object. What object he can see on the part of his employers is not pertinent nor competent, and also calls for a state of mind upon their part that he has not shown he has any familiarity with at all. The question calls for the object he could see. You have had Mr. Humphreys on the stand and Mr. Jamison. This witness cannot be
5352 allowed to guess what their purpose was.

MR. SPOONER: He would not have to guess much about it.

A. My capacity at the time as manager of Arbuckle's business in Santos or Rio, I was there to follow instructions; I was not there to think.

Q. Do you think about these matters at all? A. I don't know what that has to do with the question, what I thought.

Q. You have been in the coffee business in Brazil a good many years I believe? A. A few.

Q. And unless the facilities furnished by the conference 5353
lines were better than the rival lines or those that you could obtain by charter, or their rates were better or as good, what commercial reason was there why a shipper preferred to ship on the conference lines, or should want to ship on the conference lines at all?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent.

Q. Doesn't—basing your answer not on your relations to your employers at all, but from your experience and 5354
knowledge of the business?

MR. BALDWIN: I object to that as not pertinent to any question asked by me upon direct. His testimony was given with reference to specific acts upon his part, which he obeyed, and whether or not there is a commercial reason or otherwise has nothing to do with his following instructions.

MR. KIRLIN: We are enquiring whether the motive which prompted these instructions was a good commercial motive or an unworthy motive, and this 5355
cross-examination is to the ascertainment of that.

MR. BALDWIN: I insist that it is entirely outside the question. You have had an opportunity to cross-examine the two principals, Mr. Humphreys and Jamison, here in court, with all the correspondence and copies of these various written tenders made by Mr. Bryan offered in evidence and marked, and you consumed considerable time in cross-examining both witnesses as to what their intent was in giving these instructions, and whether or not that 5356
was a good or bad motive is entirely outside of the question that you can ask this witness, as to what he did or what the result was of what he did.

MR. SPOONER: I move to read the question and strike out the argument.

Q. Go on and answer the question, somebody else will decide whether Mr. Baldwin's point is well taken? A. I would like to hear the question read again as I have forgotten my point.

Q. Question read as follows: "And unless the facilities

5357 furnished by the conference lines were better than the rival lines or those that you could obtain by charter, or their rates were better or as good, what commercial reason was there why a shipper preferred to ship on conference lines, or should want to ship on conference lines at all, basing your answer not on your relations to your employers at all, but from your experience and knowledge of the business?") A. Well, the majority of shippers was virtually bound hand and foot to ship by the syndicate lines, and there was very little opportunity for competition.

5358 Q. That does not answer the question I put to you at all? A. It does. I cannot say any more direct.

Q. You cannot suggest any other reason than that? A. If all the shippers had free hands to ship as they liked and were not more or less under obligations to ship entirely by the syndicate lines their general facilities might have been quite totally different.

Q. You found there was a condition existing when you wrote these letters that you had been going on for some time? A. Yes.

5359 Q. And you wrote these letters with the conditions as they existed. Now, I am asking you one question, what commercial reason there was in those conditions for a shipper wanting to ship goods on conference lines unless the facilities were better, or their rates were more favorable, or as favorable as those that could be obtained by the rival lines, or through the medium of chartered ships; cannot you give me an answer to that? A. The firm had facilities to ship any way they liked; they have fuller facilities and are not tied up to ship only by one line or two lines.

5360 Q. Don't you see that does not answer the question at all, Mr. Bryan; if you don't want to answer the question, say so; if you cannot answer it, say so; don't answer something else. A. Not having the facilities at the time of shipping by the syndicate lines I cannot say what the advantages were.

Q. What was the reason you wanted to ship unless you could get better facilities or as good rates?

MR. BALDWIN: I submit he has already testified a half dozen times that he had followed instructions. His reasons cannot be at all pertinent here.

Q. Have you any answer to that? A. I have given you 5361
all the reply I think that I can.

CROSS-EXAMINATION by Mr. Burlingham:

Q. Was it in Santos or in Rio that you have your own warehouses? A. We have a warehouse in Santos and in Rio.

Q. Have you one in Victoria too? A. We have.

Q. What is the capacity of each in bags? A. In Victoria it is about 12,000 bags; in Santos it is between 8,000 and 10,000, and in Rio it is about between 45,000 and 55,000 5362
bags.

Q. I observe in looking over these exhibits that Mr. Baldwin has offered, that from Rio apparently you asked space for 500 bags on each occasion, and far more at Santos; explain that, will you please; why you desired to ship so much less from Rio than from Santos? A. The average of our shipments in general are much less from Rio than from Santos.

Q. You use Rio as a port for the accumulation of cargo rather than Santos I suppose? A. No. 5363

Q. You have comparatively little—— A. In Santos we have the facility of storing in public warehouses, which we have not in Rio.

Q. Are those annual contracts that you have with that, or is it a matter that is open to everybody? A. It is open to everybody.

Q. And you do as a matter of fact, and you have is these last years, stored coffee in considerable quantities in these ports, have you? A. We have.

Q. The bulk of your shipments up to 1910 was by char- 5364
tered vessels, was it? A. The bulk of our shipments between 1901 and 1910 was by chartered steamers.

Q. And since then the bulk has been by the Lloyd Brazileiro? A. By the Lloyd Brazileiro.

Q. Because the charter market had risen so high that it did not pay, is that it, to charter? A. We did not have sufficient movement of coffee to let coffee accumulate long enough.

Q. You had better facilities apparently than most shippers in the way of accumulating cargoes of coffee, didn't you, in these warehouses of yours? A. Yes, but it does not pay to accumulate coffee for as indefinite time.

5365 Q. But the reason why you ceased to charter was that the charter market went up so high; that is one reason, is it not? A. That was a matter entirely outside of my knowledge. Chartering was a question done by our home office in New York.

Q. You mean that being a matter of policy it would be determined by them? A. It would.

Q. Let me see whether I understand this matter of instruction; apparently the first letter is dated August 30th, 1910, from Santos, Exhibit 228; a letter from your firm
5366 to Zerrener, Bulow & Company, asking for the reservation of room for 2,250 bags to be shipped to New Orleans per S. S. *Crown Prince* at the current rate of freight, say 35c and 5% per bag. Now, was that letter written in pursuance of specific instructions received by you at Santos from your Rio branch? A. It was.

Q. And was it a telegram? A. It was a telegram, confirmed by letter.

Q. You haven't that telegram here, have you? A. I think not.

5367 Q. Did you bring up any telegrams relating to this matter? A. I believe they are all in the archives.

Q. Have you seen any of the telegrams here since you have been here in New York relating to this correspondence? A. No, I have not been looking over them.

Q. What is your recollection of what the specific instructions from Rio were with reference to that particular matter? (Handing Exhibit 228.) A. The instructions were to tender room to the syndicate lines to New Orleans, the boats on the berth to New Orleans.

Q. For a specific number of bags? For a specific num-
5368 ber of bags.

Q. And for a particular steamer? A. For the steamer then on the berth.

Q. Of the Prince Line? A. Of the Prince Line.

Q. At a particular rate of freight, or at the current rate? A. At the current rate of freight.

Q. What does that mean, the current rate of freight? A. At the current rate of freight the steamer was offering to take cargo at.

Q. Did you on the same day or thereabouts write a similar letter to Hampshire & Company? A. I believe there was a letter written and signed by me.

Q. It is your recollection that whenever you wrote a let- 5369
ter of this sort to the agents of the Prince Line you did the same to the agents of the Lamport & Holt Line? A. Yes, if they had a steamer on the berth. There is no good tendering for room if they haven't got a steamer.

Q. I find it now, Exhibit 281, will you look at that, dated August 31st, 1910, addressed apparently by your firm to Messrs. Hampshire & Company; does that refresh your recollection so that you are able to say that you wrote these two letters to these two sets of agents at that time? A. Yes, sir. 5370

Q. You do not suppose that you had separate telegraphic instructions—— A. No.

Q. From Rio for both of them, do you? A. No.

Q. It was probably contained in one despatch? A. Yes.

Q. And do you think it was for 2,250 bags, or for 4,500? A. That I cannot say; I do not remember.

Q. The instructions will show that? A. The instructions were a tender for room; room for what I thought I could get.

Q. No, in answer to my previous question you said the 5371
instructions you had were requests, or directed you to tender for a specific number? A. Yes; this is instructions to tender a specified number of bags and always the instructions were to go on tendering quantities that I found myself in a position to ship.

Q. Is your recollection quite clear? Is it quite clear and keen about that, as to the contents of the telegraphic instructions from Rio? A. It was certainly to that effect.

Q. To tender for a particular steamer that was there, or a request for reservation of room for a particular steamer then on the berth, and for a specified amount, and 5372
to continue doing so? A. Continue tendering to ship the coffee we could by them; continue tendering.

Q. You think the telegraphic instructions were not only with reference to particular steamers then on the berth, but to continue the policy with regard to all steamers of these two lines, is that right? A. Yes, because in one steamer they could say they had no room, and we would tender for the next; tender for the next.

Q. Here is an exhibit, Petitioner's Exhibit 276, a letter from Arbuckle & Company, which you say you signed, addressed to Norton, Megaw & Company, dated the 20th

5373 day of April, 1911, stating that you had 500 bags of coffee for New Orleans and 500 bags for New York, and declaring that you tendered them for shipment at the regular rate of freight respectively per your S.S. *Pruth*, sailing on the 24th inst. and S.S. *Tennyson* sailing on the 23rd of May; evidently you were then in Rio, weren't you? A. I was.

Q. And had you any specific instructions? A. Nothing more than previous instructions.

Q. The previous instructions were received by you at
5374 Santos or Rio, but I am now speaking had you any instructions from New York? A. I had no specific instructions after that more than to go on tendering cargo. We had no reply to previous tender.

Q. This is apparently the earliest letter asking for reservation? A. That is 1911, I think.

Q. In Rio? A. This is 1911. I think you will find there were 1910 letters.

Q. Not among these papers? A. You see this, this was on the 16th of April, 1911, I took charge in Rio, having
5375 come up from Santos to do so; Mr. Gray was absent there; he was the manager of the Rio house.

Q. I want to know whether the writing of that letter which purports to tender 500 bags for New Orleans and 500 bags for New York was written in pursuance of instructions that you found or received at Rio, or whether it was in pursuance of a policy which you had communicated to you while you were in Santos? A. It was in pursuance of the custom that was being carried on in the Rio office, to tender coffee when they had coffee to ship to steamers of the syndicate
5376 lines.

Q. You said to Mr. Kirlin that at that time you were shipping regularly by the Lloyd Brazileiro, weren't you? A. At times when we had accumulated too much coffee and we had to move it, we shipped by the Lloyd Brazileiro.

Q. Are we to understand that whenever you felt like it in Rio you wrote a letter to the agents of these two lines tendering 500 bags? A. Or a thousand, or whatever we wanted to ship.

Q. There is no appearance of a thousand here? A. Well, maybe. If we had shipped 500 we might have offered 1,500 more; it was just to see if they would take our stuff.

Q. What is the time when most shipments are made 5377
from Rio, Mr. Bryan? A. Shipments from Rio are made all the year round.

Q. No season? A. The bulk of the shipments is made generally between August, September and October, the new crops coming in and the larger shipments made then.

Q. And does it depend upon the—— A. It depends on the crop; if it is a large crop it may be equal all through the year.

Q. What is the average of your shipments by the Lloyd Brazileiro, 500 or a thousand bags or much more? A. 5378
Much more.

Q. How much more? A. Sometimes 1,500 or 1,800 or 40,000 bags.

Q. Are we to understand at that time, when you were tendering 500 bags to the Prince Line and 500 bags to the Lamport & Holt Line according to these letters, you were shipping thousands of bags by the Lloyd Brazileiro in April, May, and June, 1911? A. We may not have been shipping anything then. I don't think we were shipping many bags in those months at all by the Lloyd Brazileiro. 5379

Q. How about July and August? A. I thing our shipments were remarkably small from Rio de Janeiro that year.

Q. And what was the reason for that if I may ask? A. The reason was——

Q. You were accumulating it, weren't you, holding it back for a better price or what? A. The difficulty of moving it.

Q. The Lloyd Brazileiro were maintaining a regular schedule of sailings, weren't they, isn't that so? A. Very irregular. 5380

Q. They came here by their agents and told us they could not get any coffee and they had abundant room for it. Now, isn't that the fact, that they had abundant room?

> MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent; he would not know whether they had room or not; he has not testified he knows they had room.

A. I could not answer that question, as I have not sufficient data.

5381 Q. I know, but a moment ago you said you were not shipping by the Lloyd Brazileiro for certain reasons, and you gave those reasons, didn't you? A. I don't remember saying that.

Q. I thought you said they were very irregular, they had not the facilities? A. I did not say that.

Q. Why didn't you ship by the Lloyd Brazileiro, if you had the coffee there and wished to ship it? A. I had not instructions to ship.

Q. You had not any instructions to ship? A. To ship
5382 by the Lloyd Brazileiro at that time. I followed instructions, that is all.

Q. Do you mean to say you would not ship by the Lloyd Brazileiro when you were manager of the Rio office without specific instructions? A. Yes, sir. I would cable to New York and say we can ship by the Lloyd Brazileiro and if I received instructions to ship from them I would do so.

Q. Do you mean to say you never shipped by the Lloyd Brazileiro without special instructions? A. Certainly not.

5383 Q. Is that because they are inferior? A. The coffee down there that we had to ship we shipped according to instructions received from the New York office.

Q. You told Mr. Kirlin I understand that you had at least 10,000 bags down there that was in Santos or Rio? A. That was in Santos.

Q. In Rio didn't you have—— A. We had some stock, I can't remember to a bag what it was.

Q. You don't mean to say your stock was limited to these paltry 500 bags you say you tendered to these two lines?
5384 A. We tendered 500 bags to those lines and if they had given us leave to ship by them we could have tendered some more.

Q. But under your instructions you did not feel justified in putting—in giving any of this coffee you had in storage to the Lloyd Brazileiro? A. I got no instructions from New York at that time to ship by the Lloyd Brazileiro. If they cabled them, they knew perfectly well what coffee I had at Rio, and if they said ship by the Lloyd Brazileiro, I would ship it.

Q. In one of these cases I understand you to say that you received word from the agent or member of the firm

of agents that he would not take your coffee, is that right; was that in Rio? A. I don't think you have that right. 5385

Q. I will change that. I think in one case you said that one of the members of the firm, or an employe of one of these agents, said that you would not get an answer to your letter, is that it? A. Yes.

Q. Was that in Rio or in Santos? A. That was in Santos.

Q. Did you communicate that fact to New York or to Rio? A. I communicated it to Rio.

Q. And did the Lloyd Brazileiro at that time have ships that stopped at Santos and took cargo from there to the United States? A. They had, certainly. 5386

Q. And did you at that period make any shipments by the Lloyd Brazileiro? A. I cannot remember. We did that year.

Q. You did in 1910, did you not? A. Yes.

Q. And in 1911 when you were at Rio, did you not ship by the Lloyd Brazileiro? A. I think not. I cannot say for certain; I cannot remember back.

Q. As a business man, acquainted with shipping conditions the world over, you must know that in 1910 there was an enormous increase in the charter rates throughout the world, don't you know that? A. I konw that, but it meant nothing to me because I do not arrange charters. 5387

Q. Now, you also know as a fact that after that time very few ships were chartered by the Arbuckles for the transportation of coffee from the Brazils to the States, is that right? A. During that year they had not chartered frequently.

Q. And according to you you sent no shipments after 1910 to this country by any of the syndicate lines, is that true? 5388

MR. BALDWIN: He testified with reference to his Rio proposition for 1911.

Q. Did you make any shipments in 1910 by the conference lines from Brazil to the United States? A. By the syndicate lines?

Q. Yes? A. In 1910 I was in Santos; I did not make any shipments then.

Q. In 1910 you were in Rio; did you make any there? A. Made none in Rio.

Q. During that period you had considerable quantities

5389 of coffee both in Santos and in Rio? A. I had quantities of coffee.

Q. Running up into thousands of bags? Yes, running up into thousands of bags.

Q. Did you ship then at all to this country? A. We made some shipments later in the year.

Q. And you sent them by the Lloyd Brazileiro, did you? A. Yes, sir.

Q. By the Lloyd Brazileiro alone? A. I believe so.

Q. Now, am I to understand that you did not make a sin-
5390 gle shipment by the Lloyd Brazileiro without specific instruction from New York to Rio? A. Exactly.

Q. Those were telegraphic, were they? A. Yes, sir.

Q. During this whole period of 1910 and 1911, did I understand you to say to Mr. Kirlin that the rates by the Lloyd Braileiro were less than those by the conference lines? A. Exactly.

Q. You were not able to say how much less? A. No, because I think during that period there were alterations in the freight, the syndicate lines put up their rate pretty high and the same with the Lloyd Brazileiro.

5391 Q. Isn't it a fact that they were always a little higher than the Lloyd Brazileiro, if you recollect it?

MR. BALDWIN: If you know.

A. Yes.

Q. Then it would have been apparently more advantageous for you to ship by the Lloyd Braileiro, would it not?

MR. BALDWIN: I object.

5392 A. It depends entirely; it might be more advantageous for me to get rid of the cargo on hand and it may not be advantageous to the receiver.

Q. Why is that? A. Well, that is up to them.

Q. Do you mean it was the instructions of the consignees? "Up to them," what do you mean by that? A. Up to the parties interested on the other side; the owners of the coffee.

Q. Who were they? A. Parties in New York.

Q. Isn't it a fact that most of Arbuckle's shipments were for their own account?

MR. BALDWIN: If you know.

A. We received several instructions to ship on account 5393
of a third party from time to time.

Q. To a comparatively slight extent compared to the bulk of your shipments? A. To a smaller extent than the bulk of our shipments.

Q. The bulk of your shipments were from Arbuckle & Company in Brazil to the Arbuckle Brothers in the United States, isn't that so? A. Exactly.

Q. And as I understand it the whole matter of the policy as to how, when and at what rate you could ship from Brazil to the United States was determined here in New 5394
York? A. Exactly.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Now, Mr. Bryan, the business of Arbuckle & Company in Brazil is conducted as far as the policy is concerned entirely by the New York office, isn't it? A. Exactly.

Q. And whether you are in Santos or whether you are in Rio your business is to obey instructions? A. Exactly.

Q. And whether rates quoted by the conference lnes are higher or lower than any other lines and you receive in- 5395
structions to ship upon a particular line you do it? A. I try to do it, yes.

Q. It is not a part of your province as the Santos manager to arrange rates, is it? A. None whatever.

Q. And when you are in Rio in the absence of Mr. Gray it was not a part of your temporary managerial duties to arrange rates, was it? A. No.

Q. So that if you got instructions from the New York house to ship by the conference lines you would again obey those instructions if you could? A. Yes.

Q. So when you received instructions from your Rio 5396
house at Santos to ship by the conference lines and continue shipping you obeyed the instructions as near as you could? A. Yes.

Q. And you tried to get the shipment, didn't you? A. Yes.

Q. On those lines? A. Yes, sir.

Q. And could not get it? A. And could not get it.

Q. So, when your letters or tenders now in evidence were sent mentioning the steamer you ascertained in advance what steamer or line was on the berth, didn't you? A. Yes, exactly.

5397 Q. And then you mentioned it in the letter? A. Exactly.

Q. Now, when you got to Rio in 1911 Mr. Gray was temporarily absent? A. Yes.

Q. And about how long were you there? A. From April to January; the commencement of January the following year.

Q. And you found when you were there that there was in vigor a course of business to tender coffee for some reason or other on the conference lines? A. Yes.

Q. And you sent these letters that are already in evi-
5398 dence? A. Exactly.

Q. And directed, as you have testified, to the respective agents of the lines? A. Exactly.

Q. And in that case you carried out what you found to be the rule in the office that had been carried on by Mr. Gray before you left under instructions from New York? A. Exactly.

Q. You did not concern yourself with whether or not the Lloyd Brazileiro or the conference lines had the better facilities or not, did you? A. No, it did not refer to me at all. I had simply to obey instructions.

5399 Q. You were simply the employee to carry out orders? A. Exactly.

Q. Now, during the time you were making tenders at Rio the number of tenders was not confined to these few letters you have in evidence, were they? A. I think we tendered for almost every steamer we knew of being on the berth.

Q. You would ascertain if a steamer is on the berth and make a tender? A. Yes.

Q. And you ascertained before you went to Rio, that in
5400 1909, Mr. Gray had had some negotiations with Mr. Perkins and Mr. Taffe with reference to endeavoring to have the conferenc lines take the Arbuckle coffee—you knew the general way, didn't you? A. Yes.

Q. Now, when it would come to shipping coffee to New Orleans did you ascertain in making tenders to New Orleans that there was any of the coffee boats that were on the berth for New Orleans, either direct or in stopping? A. We ascertained what steamers were on the berth for New Orleans and we tendered the cargo to them.

Q. Where would you get that information? A. We would get it in the Public Exchange. We heard of it on the Exchange.

Q. Mr. Gray was not in Rio at all when you sent these 5401
tenders? A. No, Mr. Gray was in the States.

Q. Generally speaking shipments to New Orleans are very much smaller, of course, than they would be to New York, wouldn't they? A. It depends entirely on the course of business.

Q. You testified in answer to Mr. Burlingham's question that it was up to the receivers of the coffee, that is, the New York office, as to when the coffee should be shipped? A. Yes.

Q. You have no personal knowledge of the method of the 5402
New York office in conducting their business, have you, with reference to their customers? A. No.

Q. And although you were accumulating coffee from time to time both at Santos and Rio and at Victoria, it was the coffee of the Arbuckle Company? A. Yes.

Q. You had no knowledge of what relation that communication had to the commitments of Arbuckle here to their customer? A. No, none whatever.

Q. You do know in a general way that shipments by Arbuckle, that is to say, when they authorized shipments 5403
to New York, depended to a very large extent upon what their commitments were here, didn't it? A. Yes.

Q. Isn't that their general course of business? A. Yes.

Q. And in giving their orders to anyone of the Brazilian offices they took in consideration their own condition here and what orders they have to fill and what their necessities are? A. Exactly.

Q. And it might well be at times you have a large accumulation of coffee there that they might not have a large consumption for here, is that right? A. Exactly.

Q. So that in order to get at the real situation with ref- 5404
erence to the giving of orders for the shipments you have got to get the condition at both ends, isn't that right? A. Yes, sir.

Q. You have not paid any particular attention——

MR. KIRLIN: We object to the leading character of these questions.

Q. You did not during the time that you were either at Rio or Santos, you did not pay much attention to rates, did you; I mean to say, it was not a part of your province.

5405 was it? A. Not in a general way. But for my own guidance I used sometimes to find out what rates were.

Q. You were not keeping track of the variation of rates and the difference between the Lloyd Brazileiro and the conference lines, were you? A. No.

Q. Did you notice whether or not in 1910 when you were at Santos whether the Lloyd Brazileiro had during the entire year many boats on the berth at all at Santos? A. They had some steamers on the berth, I could not say how many.

5406 Q. Do you recall whether or not in that year they had comparatively few on the berth? A. I could not answer that with certainty, because I did not keep any figures on it.

Q. In order to refresh your recollection, I call your attention to the testimony of Mr. Slechta, in Exhibit 245, it appears that in 1910 the Lloyd Brazileiro only had eight steamers on the berth at Santos; now, does that in any way recall to your attention anything about my previous question as to whether or not there were comparatively few bookings, I mean comparatively few vessels of the Lloyd

5407 Brazileiro on the berth at Santos? A. I did not notice whether there was less that year than any other. You see, not being the previous year in Santos I had nothing to compare it by, but in any case it really does not affect me very greatly because when there was a vessel of the Lloyd Brazileiro they used to tender to us at once and I would send on the cable to New York advising them there was such a steamer loading and the rate of freight they were offering, and if I got instructions from New York to ship by the Lloyd Brazileiro I shipped it. If I did not get instructions to ship to New York it was of no further interest to me.

5408 Q. Then, regardless of the number of boats of the Lloyd on the berth at Santos, or the number of the conference lines on the berth, and although you had an accumulation of coffee there in no instance would you ship unless you got instructions from the office? A. No.

Q. Is it not true that the Lloyd Brazileiro boats that were offered on the berth at Santos were, with one or two exceptions, boats that made stops at the other ports, a number of other ports? A. That I could not say.

Q. This Exhibit 245, the eight boats of the Lloyd Brazileiro, on January 23rd was the *Celtic Princess,* Santos, New Orleans; on January 20th the *Tocantins,* Santos, Rio

and Maceio to New York; on April 8th the *Sao Paulo,* San- 5409
tos, Rio, Bahia, Pernambuco and Para; and on August 26th was the *Tapajos,* Rio and Santos; and then again on September 1st the *Sao Paulo,* Santos, Rio, Bahia, Parnambuco, Ceará and Pará; and on October 1st the *Rio de Janeiro* for Santos, Rio, Pernambuco, Ceará and Pará, and the *Acre* on November 2nd for the same ports. Now then, those boats on the berth at Santos that I have read included these other four or five ports and would take very much longer to get to New York? A. Yes, very much.

Q. If they had to make all of those stops? A. Very much 5410
longer.

Q. And also very much more to New Orleans, is that right? A. Yes.

Q. Making all of those stops? A. Yes, sir.

Q. The *Celtic Princess* on January 23rd, which is Santos, clearing from the port of Santos, and it says here to New Orleans; does that mean, or does it not mean, that it simply stops at New Orleans? A. It took cargo to New Orleans.

Q. Then on to New York? A. Yes.

Q. In the event that it stopped at New Orleans instead 5411
of going through to New York that would take considerable time too, wouldn't it? A. Yes.

Q. In other words, the trip would be made shorter when you went direct to New York? A. It would be much shorter, yes.

Q. Was Mr. Gray in Rio when you made these tenders at all, or had he already gone when you got there? A. I think, if Mr. Gray was in Rio in charge of the business he would make the tender himself.

Q. No, when you made the tenders to them in Rio was 5412
Mr. Gray there, or had he gone on his vacation? A. No, he was away on his vacation.

Q. How are boats loaded in Santos? A. They lie alongside of the quay and they are loaded mainly by hand labor; the bags are carried on the heads of porters up gang planks and stowed into the holds. In the last years now they have some mechanical form of travelling way—it is barely a year—

Q. In 1910? A. All manual.

Q. And that would apply to all lines, wouldn't it? A. All lines.

5413 Q. They used the ordinary stevedores that were available in the market, wouldn't they? A. Yes.

Q. One line would use the same as the other line? A. Same as the other.

Q. And the loading would be just the same? A. Exactly.

Q. Do you recall whether or not in August, August 31st, whether when you made the tender to the conference lines—do you recall whether or not there were any Lloyd Brazileiro boats on the berth at all? A. I do not remember.

5414 Q. But you do recollect that the conference lines boats mentioned in the tender were there? A. Yes, sir.

Q. Mr. Bryan, Mr. Burlingham enquired about your warehouse facilities at these three ports; were there times when you used other warehouses than your own, or did you always have sufficient warehouse space for your accumulation of coffee? A. We always had.

Q. I suppose that you were continually buying coffee for the Arbuckles in order to have coffee on hand—you continued to buy coffee down there? A. Yes, or making the

5415 market for coffee, or giving the price we could buy at subject to their order.

Q. Just explain a little more fully what you mean by that, if you had orders, making rates? A. We let them know by cable, constant cabling, of offers. We offered them so many bags at such and such a price and if it suits them and they accept we buy the coffee.

Q. When you made these tenders for shipments of coffee that you have testified to, it was your purpose and intent, was it not, that if the tenders had been accepted to have delivered the coffee for shipment? A. Yes, sir.

5416 Q. Is that right? A. Certainly.

RE-CROSS EXAMINATION by Mr. Burlingham:

Q. When you were shipping by chartered vessels did you usually take cargo from more than one port in Brazil? A. Frequently.

Q. How far is Santos from Rio? A. 208 miles.

Q. And when you had your own chartered boats you would load both in Santos and in Rio, or possibly in Santos and Victoria or Rio and Victoria? A. We have

frequently loaded, not always in the same order; we have

put coffee in in Santos and then got up to Victoria and filled up, and we have loaded some coffee—I think on one occasion in Rio—and the ship has come on to Santos and they filled her up there. Whatever was the most convenient way in the position of the ship. 5417

Q. Do you remember a chartered boat that you had named the *Birchtor?* A. I remember we chartered a steamer of that name.

Q. And according to Exhibit 246, which is a letter from Messrs. Arbuckle Brothers signed by H. M. Humphrey and addressed to Mr. Montgomery, who sits here, dated February 21, 1913, the *Birchtor* took 700 bags of coffee from Rio and 58,148 bags from Santos, and arrived on the 2nd of September, 1910; do you recall whether she came to New York or whether she went to New Orleans? A. I could not recall whether she called at Victoria. 5418

Q. You did not answer that; I want to know whether she was destined for New York direct or had coffee for New Orleans? A. I do not remember.

Q. Do you recall a boat named the *Horsley*? A. I remember a boat of that name, yes.

Q. Now, according to this same letter that vessel arrived at New York October 14th with 38,079 bags from Santos; do you know when she left Santos about? A. It is generally a 28 or 30 day—about 27 days journey. 5419

MR. BALDWIN: From Santos?

THE WITNESS: From Santos to New York.

Q. From this same letter it appears that a steamer called the *Cunaxa,* a chartered boat, chartered by the Arbuckles, arrived in the United States September 28th, 1910, with 4,250 bags from Rio and 51,591 bags from Santos; do you know whether she came to New York or to New Orleans? A. I cannot recall which steamer; I know it was one steamer that went to New Orleans. I cannot recall which is which. I haven't any of my notes here, but I could tell you in an instant if I was in my office. 5420

Q. According to this letter the shipments from Rio and Santos of Arbuckles in the year 1910 were as follows: I will give you arrivals: arrivals January 20th by the *Tocantins,* 35,000 from Rio and 34,000 from Santos; January 23rd by the *Celtic Princess* at New Orleans 33,762 from Santos; March 21st by the *Purus,* 44,254 from Rio

5421 and 5,200 from Victoria; May 25th, by the *Brookwood*, 50,070 from Rio, 9,500 from Victoria; August 1st by the *Bardsey*, 54,884 from Santos; September 2nd by the *Birchtor*, 700 from Rio, 54,148 from Santos; October 14th by the *Horsley*, 38,079 from Santos; December 27th, by the *Cunaxa*, 4,250 from Rio and 51,591 from Santos; that seems to represent according to this letter all of your shipments—and it appears, therefore, that there were no arrivals between May 25th, when the *Brookwood* arrived with 50,000 from Rio and August 1st when the *Bardsey*
5422 arrived with 74,884 from Santos; is there any explanation for the failure to make any shipments during that period, and if you say yes, what is it; were you accumulating coffee, in other words, in Santos; is there any explanation? A. There is an explanation.

Q. What is it? A. There was a limitation to exports from Santos.

Q. A Governmental limitation? A. A Governmental limitation, and shipments could not start again until the first of July. It is a crop year. The crop was tied down to a limitation of so many under the valorization.

5423 Q. To date? A. The shipments commenced on the first of July.

Q. And how long was that suspension of shipment or Governmental regulation? A. We would ship up to the limit of nine and a half million I think it was, then they could not ship unless the duty was raised tremendously.

Q. You mean the Government came down and said you cannot ship? A. No, we could not afford to ship; it was to keep down the excess shipments of coffee.

Q. But in a year you shipped from Santos 34,000 odd
5424 bags which arrived in January and 32,000 to arrive the same month, but they may have been shipped you think in the previous year? A. Before the limitations were released.

Q. Was that Governmental restriction confined to Santos? A. Confined to Santos. The Government restriction is up to the valorization law or scheme of the Government to accumulate coffee and when it was paid up to say nine or nine and a half million then it went up until it was prohibitive.

Q. There was no such restriction in Rio? A. No, no such restriction in Rio.

Q. And apparently a shipment by the *Paras* arrived in 5425
the United States from Rio consisting of 49,153 bags March 21st and another arrived from Rio May 25th by the *Brookwood* of 50,070, is that right; how is it that there were no shipments received from Rio between May 25th and December 27th except a trifling number of bags, 700 September 2nd by the *Birchtor* and 4,250 December 27th by the *Cunaxa;* that is, between May 25th and the end of the year less than 5,000 bags were received in the United States by Arbuckle from Arbuckle from Rio; how do you account for that? A. We had no instructions to ship any during that 5426
interval.

Q. It was apparently during that period that you tendered 5,000 bags under date of September 28th, for New York to one of these conference lines, I have forgotten which one? A. If they had accepted our tender we would have shipped it.

MR. KIRLIN: Without orders?

THE WITNESS: We had orders to ship if they would take our cargo.

5427

Q. And between August 26th and November 2nd four vessels of the Lloyd Brazileiro sailed from Santos and I assume also from Rio, they stopped at both ports, didn't they?

MR. BALDWIN: If he knows.

Q. Don't they call in regular order? A. I think they do sometimes.

Q. And yet you shipped nothing by them? A. We had no instruction to ship by them. 5428

Hearing adjourned to Tuesday, September 23rd, 1913 at 10.30 o'clock A. M.

5429 NEW YORK, September 23, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles Burlingham, Esq., for Frederick T. Busk, *et. al.*

MESSRS. CONVERS & KIRLIN, by J. Parker Kirlin,
5430 Esq., M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

MESSRS. SPOONER & COTTON, by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

SMITH T. BRYAN, recalled.

RE-RE-DIRECT EXAMINATION by Mr. Baldw

Q. Mr. Bryan, yesterday in response ·stion as to who and what constituted the house o & Company in Rio, either you or the qu you in-
5431 volved the idea that it was in sor rporation; you do not mean that Arbuckle & ·any are a corporation, you do not mean that, do you; a co-partnership, isn't it? A. A co-partnership, yes. Corporation, I do not understand that. I made use of a term used in this country.

Q. Whatever words were used you meant to convey that it was a co-partnership? A. Yes, a firm of specified partners.

Q. And they were the same partners as here in New York? A. Exactly, the same persons.

5432 Q. But under the Brazilian law they did business down there as Arbuckle & Company? A. As Arbuckle & Company, yes, sir.

Q. Now, with reference to the motive of making any of these tenders that you have testified to, had you ever discussed the matter at all before you made those tenders with Mr. Jamison or Mr. Humphrey here in New York? A. No, sir.

Q. Or had any written instructions or statements from them? A. No, sir.

Q. As to why you should make those tenders? A. No, sir.

Q. Had Mr. Gray had any conversation with you with

reference to why you should make those tenders? A. I 5433
don't remember discussing it with Mr. Gray at all.

Q. Now, as a matter of fact, you say that when you were in Santos and made these tenders you first received a telegram and then you received a letter? A. Yes.

Q. You have not got, I understood, or did not bring with you, any correspondence whatsoever? A. None whatever.

Q. You were simply here in New York on your way from London to Brazil by way of New York and you were asked to appear as a witness? A. Exactly.

Q. And, consequently, you had none of your archives? A. 5434
None at all.

Q. I show you a letter dated September 28th, written presumably by you; you may state whether or not that that is a letter written by you? A. Yes, that is the original letter.

Q. After looking at that letter does that fix in your mind about the time that you had received the telegram from Rio? A. Yes.

Q. It was sent prior to September 28th, 1910, wasn't it, a short time; it says here "Your favor of yesterday," is 5435
that right? A. Yes. What is the date of that letter please? The 28th?

Q. Yes? A. (After examining letter.) I believe the telegram was received that morning; it may have been sent off the night previously.

Q. But you had received other telegrams prior to that, hadn't you, instructions prior to that? A. I don't remember receiving any instructions prior to that. The telegram was first.

Q. There were some tenders that were made, Mr. Bryan, 5436
by you in August, a month prior to this letter that I show you to refresh your recollection. I am only showing you that to see if you can fix in your mind about when it was that you got your first instructions? A. I do not remember about it positively. I think these copies of telegrams may be merely copies of telegrams forwarded down by mail and received by me that I referred to. I cannot tell.

Q. It does not refresh your recollection? A. No, I cannot tell from them; no.

Q. Now, Mr. Bryan, you have already testified that you have not had any conversations or any communications

5437 with Mr. Humphrey or Mr. Jamison, or with Mr. Gray, with reference to the policy, if there was any policy, in making these tenders? A. None whatever.

Q. And any expression of opinion upon your part is not founded upon any statements or data from them? A. None whatever.

RE-CROSS EXAMINATION by Mr. Kirlin:

Q. Mr. Bryan, where do the shippers load coffee in Rio?
5438 A. We generally load out on the stream, out at the anchorage, by lighters. They have been in past years. Now they have new docks and some steamers now can go alongside of the new wharves that are made; but these docks have only been in use for the last year and a half.

Q. Prior to that the goods were all loaded by lighters? A. Prior to that there were some private wharves where steamers could take part of their cargo on board sometimes and go out to the anchorage in the stream and complete by lighters.

Q. Where are your warehouses in Rio with reference
5439 to the present wharf? A. Our warehouse in Rio is not on the seashore; it is near it; our store is set back about two or three blocks.

Q. From the wharf? A. From the sea front.

Q. And when they are accustomed to load by lighters, is there any usual place from which lighters take the coffee? A. Now there is on the new docks.

Q. But formerly? A. Formerly they used to load at various places.

Q. Ends of streets? A. Private places or wharves.

5440 Q. How do they load at Santos? A. They load along the line of docks. The steamers can go alongside of the dock themselves and load there. A large company.

Q. Where are your warehouses in Santos with reference to the customary places of loading? A. Our own private warehouse is about two blocks from the docks, but the stores we generally use are stores of the Dock Company.

Q. Well now, you have testified that you wrote these letters that have been put in evidence; did you ever do anything else in the way of offering coffee actually to the shippers than to write these letters? A. No.

RE-DIRECT EXAMINATION by Mr. Baldwin: 5441

Q. During the time that you were in Santos making these tenders you were buying coffee right along, weren't you? A. Buying and offering coffee, yes.

Q. Mr. Bryan, you were not the regular Santos manager, were you? A. I was the interim manager.

Q. Do you remember when you went to Santos in 1910? A. In 1910 I went down in, I think, the commencement of April, or the end of March. I arrived from a vacation in March and went on to Santos from Rio a fortnight afterwards. I could not give you the exact date; it was either 5442
the end of March or the commencement of April.

Q. The regular manager there was Mr. Fairchild, wasn't it? A. Mr. Fairchild was there and he left on a vacation when I arrived.

Q. Do you know whether or not that he made any tenders of coffee in writing or verbal or otherwise to these conference lines before you got there?

MR. KIRLIN: I object to that.

A. That I could not say. 5443

Q. Did you find anything in vogue in the office there indicating anything had been done?

MR. KIRLIN: I object to that as immaterial.

A. I could not say.

LOUIS R. GRAY recalled.

DIRECT EXAMINATION continued by Mr. Baldwin: 5444

Q. Mr. Gray, since yesterday you have produced, have you not, the letter press copy book you have in your office in Rio de Janeiro? A. Yes.

Q. Is this it that I have here in my hand? A. That is it, yes.

Q. The letter that you testified you wrote to Davidson, Pullen & Company in June, 1909, is copied in this book? A. Yes.

Q. Will you look and see whether or not at page 47 that is the copy, the letter press copy? A. Yes, that is the copy.

5445 Q. You never received the original back, did you, from Davidson, Pullen & Company? A. No, sir.

MR. BALDWIN: Now I call upon the defendant, the Prince Line, to produce a letter written by Arbuckle & Company on the date of 22nd June, 1909, addressed to Davidson, Pullen & Company, agents of the Prince Line, Rio.

MR. KIRLIN: We have not heard any proof of delivery of any such letter and we have no document to produce.

5446

Q. How did you send that, do you remember? A. By hand, by one of the employes of the office.

Q. Do you remember who it was? A. I do not remember, no, sir.

Q. And was it addressed to the office of Davidson, Pullen & Company at their place of business you testified to? A. Yes.

Q. How far is that from your office? A. Two blocks and a half.

5447 Q. Did the messenger return? A. Yes.

MR. BALDWIN: I offer this letter press copy in evidence. I have a copy here not contained in the book, an exact copy of this.

MR. KIRLIN: You can use that instead of the book. We object to it on the ground of no proof of delivery, immaterial and incompetent.

Marked Petitioner's Exhibit 283.

Q. This letter was sent subsequent to your conversa-
5448 tion with Mr. Taafe of the firm of Davidson, Pullen & Company? A. Yes.

Q. Did any person come to see you after that letter was sent? A. Davidson, Pullen & Company?

Q. Yes, about that letter? A. Yes, sir.

Q. Who was that? A. Mr. Peck, the broker.

Q. The broker for whom, Mr. Gray? A. For Davidson, Pullen & Company.

Q. How long was it after the letter was sent? A. Either the same day or the following morning.

Q. And did he say anything about the letter?

MR. KIRLIN: Object to the conversation with Peck

as immaterial, irrelevant and not binding upon the 5449
defendant, the Prince Line, in any way.

Q. Do you know whether or not that he came in response to that letter? A. Yes, he said so.

Q. What, if anything, did he say?

MR. KIRLIN: Move to strike out the statements of Mr. Peck as hearsay.

MR. BALDWIN: I will withdraw that for the time being.

5450

Q. You knew Mr. Peck personally? A. Intimately.

Q. On what do you base your statement that he was a broker for the Prince Line, Davidson, Pullen & Company, agents? A. I could modify that about being of the Prince Line, Davidson, Pullen & Company's broker for engaging freight and coffee for the Prince Line steamers.

Q. How long had you known that he had been in that occupation? A. As long as I have been in Rio and the Prince Line has been running steamers.

Q. Has he always been the broker that you had to do 5451
with? A. To the best of my knowledge and belief.

Q. The one that you always had your transactions with as a broker? A. Yes, sir.

Q. Now, you can say what he said?

MR. KIRLIN: I object on the ground that the ordinary function of a broker is to engage cargo and not converse about his principals.

A. He said that he came, having been asked to come by the Davidson, Pullen & Company, people, Mr. Taafe, and 5452
wanted to know what it was we wanted.

Q. Go ahead? A. And I told him just what was in the letter, that we would like to ship coffee and we wanted to know if they would still take it, or if they confirmed their previous talk with me. In using "them" I mean Mr. Taafe, and he said that they had nothing whatever to add to their verbal communication.

Q. To you? A. To me, which was—I said, which was "no," and he said well, we have nothing further to add.

MR. KIRLIN: Move to strike out all the testimony in regard to the conversation with Peck as immaterial and incompetent.

5453 Q. You testified yesterday about having sent a letter to Norton, Megaw & Company about the same time? A. Yes, sir.

Q. After your conversation with Mr. Perkins? A. Yes.

Q. Is that letter now in this same letter book? A. Yes.

Q. Page 48? A. Yes.

Q. And it is a correct copy? A. A correct copy.

Q. How did you send that letter? A. By the same messenger who took the other, at the same time.

Q. You never got the original back, did you A. No, sir.

5454 Q. How far is the office of Norton, Megaw & Company, the agents of the Lamport & Holt Line, from your office? A. Three blocks; four blocks—four.

MR. BALDWIN: Now I call upon the defendant, the Lamport & Holt Line to produce letter 22nd of June, 1909, addressed to Norton, Megaw & Company, agents for the Lamport & Holt Line.

MR. BURLINGHAM: We haven't it.

MR. BALDWIN: I offer this copy in evidence.

MR. BURLINGHAM: We object as not proved, not

5455 proven to have been delivered and immaterial.

Marked Petitioner's Exhibit 284.

Q. After you sent that letter, Mr. Gray, did any person come in response to it from Norton, Megaw & Company? A. Yes, sir.

Q. And who was it? A. Mr. William R. MacNiven.

Q. Do you know him personally? A. Intimately.

Q. How long after this letter was sent did he come? A. Either the same afternoon or the following morning.

Q. What relation, if any, did he bear to the Lamport &

5456 Holt Line? A. The broker for Norton, Megaw & Company and contracted freight for the Lamport & Holt steamers.

Q. Had he been doing that to your knowledge for a period of time? A. All the time I was in Brazil at least; he is now dead. He died two years ago I think.

Q. Was he the broker that you always had transactions with? A. Yes, sir.

Q. With Norton, Megaw & Company as agents for the Lamport & Holt Line? A. Yes, sir.

Q. Just state what he said when he came to your office?

MR. BURLINGHAM: We object to any conversation

with a broker as immaterial, irrelevant and incom- 5457
petent.

Q. He said Perkins wanted to know what I wanted; I told him we wanted to ship coffee on their line and he said, "well, you won't get any other answer than what you got."

MR. BURLINGHAM: Move to strike it out.

Q. You mean the verbal conversation you got? A. Yes. I told him, I said, we want a written answer. He said, "you won't get it; we won't give it to you." 5458

MR. BURLINGHAM: Move to strike it out on the same ground.

Q. Is that all that was said? A. That is all.

Q. You had your talk with Perkins around about the latter part of March, didn't you, 1909? A. Yes.

Q. You did not write these two letters until June, 1909? A. No.

Q. Did you have any further conversation with Mr. Perkins or Mr. Taafe? A. Yes, two or three times; but 5459
casual conversations, asking would they take the room, or why wouldn't they take the room, or something like that.

Q. Now, on the 27th of March, 1909, when Mr. Perkins stated that they had no room, the steamer *Byron* I understood you to say was on the berth? A. Yes.

Q. Do you know whether or not she had additional room? A. I know it now; I did not know it then.

Q. Do you know what the tonnage of the *Byron* was, the capacity? A. I don't know exactly, no, sir. You can 5460
find that out in Lloyd's book.

MR. BALDWIN: I offer in connection with the testimony of this witness, from the Exhibit 208, under date of 1909, the *Byron* which arrived in New York on the 19th of April, 1909, with 14,500 bags of coffee, 5 tons of rubber and 106 tons of miscellaneous cargo, and on her arrival on the 21st of December of the same year, where she brought in 42,929 bags of coffee, one ton of rubber and 167 tons of miscellaneous.

MR. BURLINGHAM: I object to this on the ground

5461 that it does not show the capacity of the vessel and does not prove that she could have carried anybody else's coffee on account of the failure of proof as to other commitments.

Q. They never took the coffee, did they, at any time the tenders were made? A. No, sir.

Cross-Examination by Mr. Kirlin:

Q. Did you ever do anything more than to write these
5462 letters in the way of offering coffee? A. At that time?

Q. Yes? A. Yes. I spoke to them, both Mr. Perkins and Mr. Taafe two or three times subsequently.

Q. You have already given the conversations? A. Yes.

Q. Was there anything further? A. Besides that; any conversation?

Q. Yes? A. No.

Q. Nothing further outside of conversations besides writing the letters? A. You are referring simply to these letters of March and June, 1909.

5463 Q. Whatever letters there were about sending coffee, you did nothing beyond writing those letters? A. I think you will have to be a little more explicit if you can, to cover the matter. If you mean from 1909 to the present date?

Q. During the period covered by the letters? A. What letters?

Q. The letters that have been put in here? A. All the letters that have been put in evidence?

Q. Yes? A. Well, except with those agents I don't re-
5464 member having spoken especially about carrying coffee, but with Mr. Daniels yes, of Busk & Daniels.

Q. So far as tenders of coffee were concerned down there you did nothing beyond writing the letters and having these talks to which objection has been taken? A. When, in 1910, or the beginning of 1911, when we wrote letters about 500 bags, sending 500 bags about which Mr. Bryan testified yesterday, Mr. Perkins at one time asked me why we were writing the letters, and I answered him in order to get room; we want to ship by your line.

Q. Have we now got all that you did? A. Well, that I can remember up to that time. Of course, I would not say

at the time nothing was done with the idea for giving testimony in Court. 5465

MR. SPOONER: You don't know that, do you?

THE WITNESS: On my part absolutely not.

Q. I will ask a question about Peck. Peck was not a partner of Davidson, Pullen & Company, was he? A. Not to my knowledge, no.

Q. What business did he do besides engage cargo for the Prince Line? A. At one time he was the Rio correspondent of B. A. Smith, a man who chartered steamers 5466 for us, and I understood from Mr. Peck, Mr. Knott did not object to his acting in that capacity; but after we chartered some steamers he had some misunderstanding with Mr. Smith, B. A. Smith of London, and ceaesd to represent him. I think that Mr. Peck is open to charter sailers or any other, besides being the broker also of the Prince Line or the Davidson, Pullen Company.

Q. He has his own office? A. He has his own office, yes.

Q. Conducted his own business, whatever it was? A. Yes. 5467

Q. Apart from the Prince Line business? A. Whatever it was I don't want to say, except I know of that I am telling you.

MR. BALDWIN: When was that, not with this business.

THE WITNESS: In 1909 and 1910. No, he had nothing to do with it.

CROSS-EXAMINATION by Mr. Burlingham:

Q. Was Mr. MacNiven a broker merely? A. Yes. 5468

Q. Not connected with the firm of Norton, Megaw & Company? A. As far as I know, no; but he may have had an interest of which I know nothing.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. What was the usual method of engaging space on steamers there during the time you were shipping over the conference lines? A. At the time we stopped, Mr. Kennedy, who was my predecessor there, when he was out and when I went there, or away on vacation, I had charge; the broker would come in the office and say a certain ship was on the

5469 berth with so much room reserved—none of them went to Santos—and they engaged room for Rio, and they asked us, who represented Arbuckle Brothers, how much we thought we could ship, and dependent on orders which we had from New York, how much we had in stock and how much we expected to buy, we would tell him we wanted reserved for us five, ten, or fifteen thousand bags. Then he would tender on a contract, a sort of proforma freight contract that he had reserved for us in the said mentioned steamer to sail on or about a certain date, so many bags,
5470 space for so much coffee. As time went on if we billed all of our orders and wanted more room we went to this broker, to Mr. MacNiven, and told him we want so much more room. He would then go around and see the other shippers and see if they could give up of their reservation, how much they could give up, and would either give it to us or say that he could not give it to us, or would let us know later on.

Q. What I want to bring out is you would not actually take the coffee down there and tender it either at the wharf
5471 or lighter until they give you the room? A. No. They wrote and asked us for it.

Q. In any event, you would not take the coffee down to the boat or for lighterage until you had received communication from the agents whether they would give you the space, would you? A. No, sir, and then they had to furnish the lighters, to give us the lighters.

Q. So these tenders or letters which were written with reference to the coffee would be the only method you would have of your own volition where the agent did not come and solicit, isn't that so? A. Yes.

5472

MR. KIRLIN: You could go to the office and make a booking, couldn't you?

THE WITNESS: Well, I don't know about that.

Q. If those offers had been accepted then you would have had to have the coffee there, wouldn't you, to deliver it?

MR. KIRLIN: We object to the questions as of a very leading character, entirely improper on the part of the Government. They are not only leading but they suggest the answer; it suggests that there is only one answer.

Q. (Question read.) A. We would have to have the cof- 5473
fee for shipment when they asked for the shipment. They would name the dates when we could ship.

Q. When you first had your conversations with Mr. Perkins and Mr. Taafe, as I recollect your testimony yesterday, you said you had received some communication from the home office here in New York for a quick shipment? A. Yes.

Q. And was it or was it not on your own volition that you went to see Mr. Perkins first? A. Only on my own volition. 5474

Q. And it was your purpose to engage space to ship coffee, wasn't it? A. Yes, sir.

Q. That was in March, as I recollect, 1909? A. March, 1909, yes.

Q. And you went to see him in good faith? A. Yes.

Q. And went to see Mr. Taafe in good faith? A. Absolutely.

Q. And with the expectation that if they had granted you space without those conditions you would have at once shipped coffee over their line? A. Yes, sir. 5475

MR. KIRLIN: Objected to as leading.

Q. Was that or was it not your intent? A. Yes, that is so.

MR. KIRLIN: We object to that also.

Q. Had you any communications with your home office here by cable with reference to the purchase of coffee about that time, or a little before? A. We had bought coffee on advices from New York; under cable advices. 5476

Q. I show you what purports to be a copy of a cable of March 25th, 1909, is that the cable you received—have you got the original cables? A. No, sir.

Q. But these are copies that were made of them? A. Those are copies.

Q. Just look at that and see if that is a copy? A. It is. It is possible I may have this.

Q. Is that a copy or not? A. That is a copy.

MR. BALDWIN: I ask to have that marked for identification.

Marked Petitioner's Exhibit 285 for identification.

5477 Q. You sent a response to that on the following day, did you, or about that time? A. That was the same day.

Q. I show you what purports to be a copy of a cablegram, can you state whether or not that is a copy of the cablegram you sent? A. Yes, sir.

Q. Was that in response to the one of March 25th received from Arbuckle & Company? A. Yes, sir.

MR. BALDWIN: I offer that for identification.

Marked Petitioner's Exhibit 286 for identification.

5478 Q. Now, I show you what purports to be a copy of a cable of March 25th, 1909, from Arbuckle & Company to you, or to your firm there in Rio; is that another cable you received about that time from them—a copy? A. Yes.

MR. BALDWIN: I ask that that be marked for identification.

Marked Petitioner's Exhibit 287 for identification.

Q. After you had your talk with Mr. Perkins you tes-
5479 tified yesterday, I believe, that you sent a cable to your office here in New York? A. Yes, sir.

Q. To the effect that you thought they would probably take the coffee? A. Yes, sir.

Q. You can state whether or not what I show you under date of March 27th, 1909, is a copy of the cable? A. It is a copy of a second one.

MR. BALDWIN: I ask that that be marked for identification.

Marker Petitioner's Exhibit 288 for identifi-
5480 cation.

Q. I show you another copy of a cablegram under date of March 26th, 1909? A. I received this, yes, sir.

Q. Is this one of March 26th a copy of the cable that you received? A. Yes, sir.

MR. BALDWIN: I ask that that be marked for identification.

Marked Petitioner's Exhibit 289 for identification.

Q. I show you another copy of a cable of March 29th,

1909, is that a copy of the cable received from Arbuckle 5481
& Company? A. Yes, sir.

Q. Was that cable received in answer to yours of the 27th of March, 1909, Exhibit 288 for identification? A. Yes, sir.

MR. BALDWIN: I ask that that be marked for identification.

Marked Petitioner's Exhibit 290 for identification.

Q. You spoke yesterday about the advertisements of 5482
Norton, Megaw & Company in the Journal down there? A. Yes, sir.

Q. In the Rio Journal? A. Yes.

Q. Do you produce a copy of that Journal? A. Yes, sir.

MR. BURLINGHAM: We do not deny they are the agents, at least, I do not.

Q. Now, Mr. Gray, has the firm of Arbuckle & Company at any time since 1906 been doing any cost and freight business? A. Yes. 5483

Q. Up to what time? A. Up to recent years. We are always trying to do it.

Q. Have you been able to do any cost and freight business in any great magnitude? A. Very little.

Q. Just explain so that the record will show what cost and freight business is. Of course, you understand it and we understand it, but the court may not? A. Cost and freight business means that the seller in Brazil sells to a man in the consuming market on the basis where the buyer pays the cost in Brazil, freight to the foreign ports and 5484
all landing charges and other charges at port of delivery are paid by the buyer.

MR. KIRLIN: What about loading charges?

THE WITNESS: The freight is from shore to shore. The custom of the port. The custom of the port in Brazil is the ship has to take it from the shore. We put it on the shore and they have to take it from there.

Q. Is that business done with having a particular time of delivery either in the offer by the seller or—— A. Almost invariably.

5485 Q. And it is a condition of the business, is it not? A. It is a condition of the business, yes, sir.

Q. So that facilities for making deliveries upon time is inherent in that business, is that right? A. Yes, sir.

Q. You say you have done very little cost and freight business? A. Very little, yes, sir.

Q. What effect, if any, would the acceptance of your tenders to the conference lines taking your coffee of conditions have had on your cost and freight business?

MR. KIRLIN: We object as immaterial.

5486

A. It would have allowed us to increase it very materially.

Q. In what way and by reason of what?

MR. KIRLIN: Subject to the same objection.

A. By reason that it would have facilitated our delivering the coffee, or, rather, shipping it to suit the buyer's request, and if we were unable to do so, not being able to ship by the syndicate lines, naturally our business was
5487 curtailed; we went into the business in either 1906 or the beginning of 1907 with the idea of building up a large cost and freight business and we were unable to do so chiefly owing to the inability to ship by the syndicate lines.

Q. Now, is the cost and freight business localized in any particular market here or port of the United States; do you understand my question? A. I don't know if you understand me. We sell usually cost and freight to New York or cost and freight to the port, wherever it is.

Q. Is there anywhere else on the Atlantic seaboard in
5488 the United States that would be—— A. New York and New Orleans.

Q. Now, does the inability to ship over the syndicate lines calling at New Orleans in any particular way affect this cost and freight business? A. Yes, very greatly.

Q. Just state how and in what manner? A. The land freights from New Orleans to many parts—I believe Chicago included—I am not quite sure Chicago—but to the middle west and the west, the land rates are much cheaper or are cheaper than they are from New York—I don't know whether it is much or little; it is cheaper freight. Whatever difference there is in the railway

freights legislates against sending coffee to New York; 5489
naturally it would be shipped to New Orleans. Many of the buyers also direct that their coffee shall be shipped via New Orleans. Our not being able to ship to New Orleans on the syndicate lines, the Lloyd Brazileiro having few, if any steamers for there, prevented our doing business.

Q. Will you state a little more fully, Mr. Gray, in just what way the failure of the syndicate lines to take your coffee without condition militated against your increasing or building up this cost and freight business. In other words, could the cost and freight business be done 5490
as part of your charter business or relying on one line that had an infrequent number of sailings? A. Very little of it could be done.

Q. The purpose of my question is to have you go a little more fully into just how the failure of the syndicate lines to accept your coffee prevented you from building up that business. You said it did, now go on and state why and how? A. In the sense that if a man offered coffee, let us say an offer to ship coffee, say, in August, during the month of August, from the first half or the second half 5491
of August. We accepted the offer expecting to have a vessel the first half or the second half of August, or whatever date it may be, and there was a steamer of Lamport & Holt, we will say, or of the syndicate lines—we expected to have one of another line, an outside line, and it was not there—if we chartered a vessel we would charter all vessels lay days to begin so many days, ten, fifteen, twenty, thirty days before cancelling date. If the vessel is not there at the cancelling date we have the right to cancel our charter. The charterer has a right. She can
be there any day within that. You must start to load 24 5492
hours after she gets her clearance in the Custom House as having arrived, or advise us in writing if she is not an empty ship that she is ready to load. Well, if we charter a boat cancelling date to be lay days to begin 20 days before the 30th of August we expect—we have to make some sort of a calculation—we expect that boat to get there about the 20th, spend seven days in unloading and she will be ready on the 27th. Well, she don't get there; she gets there and is only ready to unload on the 30th. We load, weather working lay days, Sundays and holidays excepted, it rains on the 30th and 31st. We cannot

5493 help it. We have sold our coffee for shipment the latter part of August and we cannot ship. The buyer has a right to cancel his purchase. That is the chartered boat. With an outside liner, you might say the Lloyd Brazileiro, if you can get her to take it, the same thing might happen. They come down loaded with general cargo, case oil, everything, from New York; they go to Rio and get a stevedore's strike on for a few days, she delays at Rio and then she goes on to Santos and may go on to San Francisco, Brazil. By the time she gets down to San Francisco
5494 and gets back to Santos where she is to load, instead of being the 20th of August it is the 3rd of September. The buyer has the right to cancel his contract. The syndicate lines have a great number of boats; they always have some steamer between the first and fifteenth and between the fifteenth and thirtieth. If we sold cost and freight prompt shipment—prompt shipment means shipment within fifteen days—there is always a syndicate line ready for loading. This means that we put the coffee in her and get her bill of lading dated before the last day for which
5495 we have sold our coffee. It is perfectly natural to know that under those conditions it is very, very hard to build up a cost and freight business. We can send our chartered steamers via New Orleans. Many times a steamer don't want to go to New Orleans first. If freights are high they make a condition we have to pay a higher rate of freight. That, of course, is incidental and up to us. The Lloyd Brazileiro, they won't send a steamer to New Orleans unless there is a certain amount of coffee for New Orleans. If we cannot get it she won't go there. So what are we to do? The syndicate lines offer a steamer for
5496 New Orleans. She goes there, we put our coffee on and can ship it, consequently we can sell cost and freight if we can ship by the syndicate lines; if we cannot ship by the syndicate lines it curtails our business and prevents building it up, and this cost and freight business as a rule is done at a profit, and it naturally curtails our profit. Is that sufficient?

Q. Well, then, the result of this is that during the years since 1907 you have not been able to do anything but a very small cost and freight business? A. No, sir.

Q. And in your opinion if you could have made arrangements with the syndicate lines to ship, without conditions, you could have done it? A. Yes.

Q. It often happens too, doesn't it, that the syndicate lines have more than one boat on the berth at the same time? A. Yes, they have one for New Orleans and one for New York at the same time. 5497

Q. And they oftentimes have more than one—— A. The syndicate lines, yes. I was referring more or less to one line, yes.

Q. For instance, the Lamport & Holt and Prince Line oftentimes will have a boat on the berth at the same time? A. Yes. In one of their telegrams this thing actually happened. We had sold coffee for shipment the 31st day of August, we had a steamer, the *Horsley* you made reference to yesterday, she was there—— 5498

Q. What was she, a chartered steamer? A. A chartered boat. And in expectation of shipping this coffee we had her come there and the captain could not get his holds ready, because he could not clean them. He had come down with coal I believe and could not get his holds ready because he has to wash them out, white wash them and dry them, and they cabled us out that we had to ship before the 31st of August, get the bills of lading signed, and we could not do it. 5499

Q. Were there any syndicate boats there at that time? A. We shipped by a Lloyd boat then and I am sure there were syndicate boats there, yes, but I could not say the names without looking back the record. You might say there are always syndicate boats in port ready to load.

RE-CROSS EXAMINATION by Mr. Kirlin:

Q. Was this a cost and freight transaction that you are referring to? A. Yes. And in one of the telegrams I think there is the names of the people; we call them third parties; to whom we sold. 5500

Q. Would boats making stops at these various ports, these smaller ports you have testified to, Bahia, Ceará, Pernambuco and all that, would boats that make those stops be available to you for cost and freight business? A. No, sir. In the first place the buyer would not admit of such long delay, and in the next place they could not receive but very little coffee. As a rule they only have room for 5,000 bags, because they have so much coast freight taken. And there is another case where in Victoria we could not do business, and we have had to bring our

5501 coffee from Victoria to Rio. The coffee sold to third parties cost and freight, you understand? Simply because we could not ship by a syndicate line, and we were forced to pay extra freight and bring the coffee from Victoria to Rio and trans-ship it into a Lloyd Brazileiro and from her to our own chartered boat. That has been done several times; and once we had to ship coffee from Rio to Victoria and put it on a boat, a Lloyd boat I think it was and one of ours. I won't be sure in Victoria, but shipped it from Rio to Victoria and had it transshipped
5502 here at Victoria to go to New York.

Q. In your own chartering, where you charter for your own account, do you ever carry freight for others? A. No, sir.

By Mr. Baldwin:

Q. In your own cost and freight business would the purchaser stand for the shipment by boats that go by way of New Orleans to New York, assuming that the purchaser was in New York? A. Well, he would not like it. He might
5503 not say anything, but it would legislate very much against us, because then he would go and buy somewhere where they could bring it in direct.

By Mr. Kirlin:

Q. What are the financial arrangements that accompany these cost and freight transactions? A. They either send confirmed or unconfirmed credit.

Q. And you draw against this? A. We draw against this, yes.

Q. When do you draw? A. We draw when we ship the
5504 coffee.

Q. The transaction is closed when you ship the coffee as far as they are concerned? A. Yes.

Q. And it is the purchaser's coffee during transit? A. Yes; he covers the insurance.

Q. He does the insuring himself? A. Yes.

Q. Do you carry these cost and freight orders on your own chartered boats if you have any in hand at the time? A. Yes; we would. I would not say we have done it, but we would do it if the boat was going direct to New York and we had coffee sold to certain parties; we would naturally put it on our own chartered boat.

Q. That has occurred, hasn't it? A. I could not answer 5505
that, but the record will show it because the manifests are all published.

Q. I gather from what you just told Mr. Baldwin it is of advantage to shippers to have frequent and comparatively regular sailings from Brazil to New York? A. At certain times it is; at others no. If we can get free warehousing sometimes it is better to ship by slow.

Q. The general burden of your testimony to Mr. Baldwin is that you suffer in business when you do not have facilities for making shipments the first half or the second half 5506
of the month? A. Third party shipments; this cost and freight.

Q. Therefore, merchants who are doing that kind of a business are at an advantage in having frequent and regular sailings, are they not? A. You mean at the cost and freight business?

Q. Yes? A. Yes, sir. Sometimes you want free storage; the market is going up and a seller may take 40 days—you get 20 days free storage. The storage is 4c a bag a month and you pay 4c a bag. That may happen, that has 5507
happened sometimes.

Q. Of course, you realize that certain lines in order to maintain regular sailings, must have dependence on merchants' shipments, must they not? A. I do not recognize it in the meaning in which you state it, sir, because in other countries they do not have to.

Q. Don't they have to? A. In Australia they have a bill against it, directly against it; it is called the Straits bill.

Q. Wouldn't you say as an economic matter that in order to maintain a regular, frequent service that the line would have to be in a position of knowing that it could get car- 5508
goes regularly? A. Would you mind stating that again, please?

Q. (Question read.) A. No, sir.

Q. How would they make the money necessary to maintain the regular, frequent service in that event? A. By giving good service and by forcing the shipper for his own good to only ship that way, without forcing him to make a contract in writing.

Q. Will shippers do that if somebody else put a boat on the berth at the same time at a cut rate; would you as a merchant? A. We have done it.

5509 Q. Your principal reason for not coming to terms with the lines was that you want to reserve the right of chartering ships to carry your own cargoes, wasn't it, whenever it suits you? A. I think Mr. Daniels' testimony——

MR. SPOONER: Never mind Mr. Daniels' testimony.

MR. BALDWIN: Answer the question yourself; not what Mr. Daniels testified.

Q. (Question read.) A. I think that is a question I cannot reply to directly because I do not do the chartering,
5510 and I did do it up to a certain time, then New York did it. Then we received our instructions in regard to the syndicate lines which I thought thoroughly reasonable and, consequently, I do not think I can answer that. My principal would have to answer it directly.

RE-CROSS EXAMINATION by Mr. Burlingham:

Q. Have you in your possession, or have you with you in New York, a copy of the cablegram to which you have referred as giving you instructions to make the first tender
5511 of coffee to one of the conference lines in August or September, 1910?

MR. BALDWIN: I object to it as immaterial, irrelevant and incompetent whether he saw a copy or not. If counsel for the defense desire to put in evidence such copies of cablegrams as are now in the possession of the Government, the Government will freely offer them for that purpose.

Q. Now, answer the question? (Question read.)

5512 MR. BALDWIN: Objected to as immaterial, irrelevant and incompetent.

A. Yes, sir.

Q. You have seen it? A. Yes. Can I modify that by saying I think so, because the date is rather confusing. I would not want to swear it is a telegram of a certain date if I did not see it.

Q. Mr. Bryan testified that pursuant to instructions he made a tender—— A. From Rio, I think.

Q. September 28th, 1910, of 4,206 bags? A. Yes, those instructions went from Rio I believe.

Q. But he stated that the original instructions went from New York to Rio? A. Yes. 5513

Q. And then they were transmitted to him, is that right? A. Yes, sir.

Q. Now, can you produce a copy of that particular cablegram from New York to Rio relating to that tender? A. To Rio?

Q. Yes? A. Well, the firm might produce it.

Q. Have you got it here? A. I haven't it here.

Q. Have you seen it in this room? A. I do not know, because there is the date. There are copies of telegrams here, but this one date which you ask me to confirm I am perfectly willing if it was the 28th of September to say so. 5514

Q. Will you look and see if you have a cable there that makes the basis of Mr. Bryan's letters of the 30th of August and 28th of September, 1910 to the agents of the Prince Line and of the Lamport & Holt Line from Santos? A. I have a copy of a cablegram of the 27th of September, 1910.

Q. That is a letter from you, isn't it? A. No, sir, that is in New York. There is one of the 26th of September also, which is probably more to the point than that which you want. 5515

MR. BURLINGHAM: I will read this in.

MR. BALDWIN: I am willing for this to go in if you will have them all go in.

MR. BURLINGHAM: One at a time. I am going on one by one. There is no condition about it. He produces it so I would like to have it marked.

Q. Read the telegram that you received stating the date and from whom to whom? 5516

MR. BALDWIN: I object.

A. (Reading.) Louis R. Gray from Arbuckle Brothers, New York——

MR. BALDWIN: Mr. Gray, that is only a copy, is it not?

THE WITNESS: Yes, sir.

MR. BALDWIN: The original is where?

THE WITNESS: I don't know.

5517 Q. Do you remember that you received it? A. Yes, sir.

Q. Go on and read it, Mr. Gray, please? A. 26th September, 1910. Tender shipment *Spanish Prince* via New Orleans October 20th in order to make a case also try others.

Q. Have you any cablegram with reference to the 30th of August letter of 1910? A. Yes.

Q. Will you let me see it, please? I want it from Arbuckle to you? A. Yes, that is at the top (indicating).

Q. This is it, is it, dated the 29th of August? A. Yes,
4518 sir.

Witness produces memorandum of a cablegram received by Louis R. Gray from Arbuckle Brothers, dated New York, August 29th, 1910.

Q. You read it, please?

MR. BALDWIN: I object to this as immaterial, irrelevant and incompetent and not the best evidence.

Q. Read it please. A. (Reading.) "Tender syndicate
5519 at current rate of freight without rebate shipment by steamer August, Levy, Miller, Steel, Closset, Durand, Cottam via New Orleans if you can do it will complete Morsley Ship direct to New York otherwise compelled via New Orleans if not successful make case."

Q. What are these names, Levy, Miller, and so forth? A. Those are the third parties; coffee sold cost and freight to them that we were not able to ship.

MR. KIRLIN: That is, you were asked to make shipments to those people?

5520 THE WITNESS: We sold the coffee to them. The coffee was to be shipped the 31st of August.

Q. And this shipment by steamer August means shipment by steamer during the month of August? A. Yes, sir, up to the 31st.

Q. This you received I suppose on that date? A. Yes, sir.

Q. Or the next morning? A. I think we received it on that day; it was probably sent the night before.

Q. I see it is marked copy of cable received 29th August? A. Yes.

Q. And it is a copy as you recall it? A. Yes, sir. 5521

Q. And you then transmitted that to Santos, did you?

MR. BALDWIN: This is all subject to my objection?

MR. BURLINGHAM: Yes.

Q. And then you transmitted it to Santos, did you? A. Yes, sir.

Q. To Mr. Bryan or whoever was there? Yes, whoever was there at the Santos house.

Q. What does this mean "If not successful make case"? A. I do not quite know. They probably wanted to be sure 5522 they would not accept our coffee. I don't know whether it is or not positively.

Q. Yesterday I understood Mr. Bryan to say that there was some instruction to continue to make these tenders; do you recall any such instructions from New York? A. Yes.

Q. Can you refer to them here? A. I don't know.

Q. Will you kindly try to do so; have you got it? A. Yes, sir.

Q. What date was it? A. Received the 2nd of December, 5523 1910.

Q. Will you kindly read it?

MR. BALDWIN: I make the same objection I made before.

Q. Let me ask you; do you recall receiving this cablegram? A. Yes, sir.

Q. And are you satisfied that that is a substantially correct copy of it? A. Yes, sir.

Q. Or an exact copy of it? A. Yes, sir. 5524

Q. Now kindly read it in evidence.

MR. BALDWIN: That is under my same objection, immaterial, irrelevant and incomptent, and not the best evidence.

A. (Reading.) "Until further notice tender 500 bags Rio & Santos coffee every Lamport & Holt steamer Prince Line steamer syndicate particularly via New Orleans; prove tendering witness want good evidence keep records details prove any ignoring."

Q. The original of this cablegram was in your office in Rio? A. Yes, sir.

5525 Q. Did you have these copies compared? A. The copies were taken from a cable book. When we get cables we enter them in a book and these copies were copied from this what we call our cable book.

Q. And then what did you do with the copies? A. What copies?

Q. These you have in your hand; how do they come into this country? A. I brought them.

Q. You had those made to bring with you? A. Yes, sir.

Q. At whose request? A. My own convenience.

5526 Q. And are you satisfied they are true and correct copies of the originals? A. Yes, sir.

Q. Did you come up here to give testimony in this case? A. Yes, sir.

Q. Was that your principal reason for coming? A. Yes, sir.

Q. And to fortify yourself for that you brought copies of documents, is that right? A. Yes, sir.

Q. And you had them made for that purpose? A. Yes, sir.

5527 Q. And they are true and correct? A. Yes, sir.

RE-RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. You were requested through the office here by the Government to come and testify in this case, weren't you? A. Yes, sir.

Q. Exhibits 285 for identification, 287 for identification, 289 for identification and 290 for identification are also copies which you had made up in the same way from your cable book which you have down there? A. Yes, sir.

Q. And brought with you? A. Yes, sir.

5528 MR. BALDWIN: Now, I offer all of those.

Exhibits marked 285 for identification, 287 for identification, 289 for identification and 290 for identification received in evidence and read as follows:

Exhibit 285: "Victoria coffee do not care to buy at all. If necessary to keep in market would buy if you can ship direct to New York by steamer first April. Do not ship via New Orleans. Buy as little as possible."

Exhibit 287: "Make firm offer bags Rio coffee

7s % New York, good roasting. Make firm offer 5529
bags Rio coffee 8s % New York, good roasting. Make firm offer bags all grades, give full description. When can you ship. Others offering at Markets dull but steady."

Exhibit 289: "Market firm but demand light. You may arrange by steamer first half April, Lamport & Holt steamers."

Exhibit 290: "Keep independent."

MR. BALDWIN: I offer the wires in response thereto from the office in Rio to the office here of 5530
Arbuckle Brothers, Exhibits 286 for identification and 288 for identification.

Received in evidence as Exhibits 286 and 288, reading as follows:

Exhibit 286: "Can probably arrange as follows: Lamport & Holt Steamers, shipment by steamer first half April. Freight regular steamers two weeks 25 cts. & 5% Rio and/or Victoria coffee. Direct to Lloyd Brazileiro. Can arrange only shipment by steamer second half April via 5531
New Orleans."

Exhibit 288: "March 27th syndicate lines will take our shipment providing we agree to leave Lloyd Brazileiro entirely. Lloyd Brazileiro now they say guarantee shipment 8th April direct to Wire instruction."

MR. BALDWIN: Now I offer copy of cablegram to Arbuckle & Company in Rio from Arbuckle Brothers, New York, dated the 6th of May, 1909.

Marked Petitioner's Exhibit 291 and reads as 5532
follows:

"Wire probable effect of complain to Federal Government syndicate refuse to allow you to ship requiring we must abandon Lloyd Brazileiro."

MR. BALDWIN: I offer the answer dated the 7th of May, 1909, from Arbuckle & Company, Rio to the Arbuckle Brothers, New York.

Marked Petitioner's Exhibit 292 and reading as follows:

"No effect. Lawyers opinion Federal Government would not act under the law here. Syndicate are not compelled."

5533 MR. BALDWIN: I offer cablegram of May 25th, 1909, received by Arbuckle & Company at Rio, sent by Arbuckle Brothers, New York.

Marked Petitioner's Exhibit 293 and reading as follows:

"Ship immediately via Rio."

MR. BALDWIN: I offer in evidence cablegram of the 25th of May, 1909, sent by Arbuckle & Company of Rio to Arbuckle Brothers, New York.

Marked Petitioner's Exhibit 294, and reads as
5534 follows:

"Sale Hulman without a guarantee of time of shipment. Lloyd Brazileiro offers ship immediately via Rio; rate of freight is 18 extra. Wire promptly; awaiting reply."

MR. BALDWIN: I offer in evidence cablegram of the 26th May, 1909, from Arbuckle Brothers, New York, to Louis R. Gray, Arbuckle & Company, Rio.

Marked Petitioner's Exhibit 295, reading as follows:

5535 "Refer to your letter of 1st ultimo. Write us fully. Tender of our coffee Lamport & Holt steamers, Prince Line steamers. What position do they take with us? What position do they take other shippers who do not use syndicate exclusively."

MR. BALDWIN: I offer in evidence cablegram of the 27th of May, 1909, from Arbuckle Brothers, New York, to Louis R. Gray, Arbuckle & Co., Rio.

Marked Petitioner's Exhibit 296 and reading as follows:

5536 "Why did you not ship Hulman, *Castilian?*"

MR. BALDWIN: I offer in evidence cablegram of May 28th, 1909 from Arbuckle & Company, Rio, to Jamison, Arbuckle Brothers, New York.

Marked Petitioner's Exhibit 297 and reading as follows:

"Refer to our wire 27th March."

MR. BALDWIN: I offer in evidence cablegram of 22nd June, 1909 from Arbuckle Brothers, New York, to Louis R. Gray, Arbuckle & Company, Rio.

Marked Petitioner's Exhibit 298 and reading as follows:

"Refer to your letter of 4th ulto to Busk, Daniel. 5537
Is it as stated by us, did syndicate lines refuse our shipment tendered by you at their current rates, they having available space. Answer categorically. Information is required for state department. Refer to your letter of 29th ulto very unsatisfactory. What is the meaning of same rate not mentioned before?"

MR. BALDWIN: I offer in evidence cablegram of June 22nd, 1909.

Marked Petitioner's Exhibit 299 and reads as fol- 5538
lows:

"Yes and in reply to our letter (of) to-day Norton, Megaw & Co. Rio, Davidson, Pullen, they have confirmed verbally previous verbal communication stop, same rate means same as syndicate lines, Lloyd Brazileiro steamers *Goyaz, Sergipe, Acre,* carry Brazil flag. The balance Lloyd Brazileiro foreign flag. This is or (refers to) your 2nd wire of yesterday, do not think it probable (that)."

MR. BALDWIN: I offer in evidence cablegram of 5539
23rd July, 1910, from Arbuckle Brothers, New York, to Arbuckle & Company.

Marked Petitioner's Exhibit 300 and reads as follows:

"Refer to our wire of did you offer Prince Line steamers 12,300. Give full particulars."

MR. BALDWIN: I offer in evidence cablegram of 23rd July, 1910, from Arbuckle & Company, Rio, to Arbuckle Brothers, New York.

Marked Petitioner's Exhibit 301 and reads as fol- 5540
lows:

"Have offered to Lloyd Brazileiro no steamer tonnage. Have not offered Prince Line steamers."

Marked Petitioner's Exhibit 301.

MR. BALDWIN: I offer in evidence cablegram of 29th August, 1910, to Louis R. Gray, Arbuckle & Company, Rio, from Arbuckle Brothers, New York.

Marked Petitioner's Exhibit 302, and reads as follows:

"Tender syndicate at current rate of freight without rebate, shipment by steamer August, Levy, Miller, Steel, Closset, Durand, Cottam, via New Or-

5541 leans. If you can do it will complete *Hosley*. Ship direct to New York, otherwise compelled via New Orleans. If not successful make a case."

MR. BALDWIN: I offer in evidence cable of August 29th, 1910, from Arbuckle & Company, Rio to Jamison, Arbuckle Brothers, New York.

Marked Petitioner's Exhibit 303, and reads as follows:

"*Crown Prince* now on berth to load at 3 ports Rio, Santos and Victoria; Santos first, Victoria last
5542 port. Santos agents have informed us insist room all engaged. Stop. Will tender Lamport & Holt steamer *Lincolnshire* shipment by steamer on or before the 20th of next month."

MR. BALDWIN: I offer in evidence cable of August 31st, 1910 from Arbuckle Brothers, New York, to Arbuckle & Company, Rio.

Marked Petitioner's Exhibit 304, and reads as follows:

"*Crown Prince* now on berth to load at 3 ports Rio, Santos and Victoria: Santos first, Victoria last
5543 port. Santos agents have informed us insist room all engaged. Stop. Will tender Lamport & Holt steamers *Lincolnshire* shipment by steamer on or before the 20th of next month."

MR. BALDWIN: I offer in evidence cable of August 30th, 1910, from Arbuckle & Company, Santos, to Gray, Rio.

Marked Petitioner's Exhibit 305 and reads as follows:

"New code. Now here loading *Crown Prince* will
5544 begin loading to-morrow or next day to load at 3 ports Rio, Santos and Victoria Santos first port, Victoria last port, *Lincolnshire* next. September 15th, agents state all room given out but not closed. Shall we tender *Crown*."

MR. BALDWIN: I offer in evidence cable of August 31st, 1910, from Arbuckle & Company, Santos, to Gray, Rio.

Marked Petitioner's Exhibit 306 and reads as follows:

"*Crown* agents insist new code steamer room all engaged. Shall we tender *Lincolnshire?*"

MR. BALDWIN: I offer in evidence cable of August 31st, 1910, from Arbuckle & Company, Santos, to Gray, Rio. 5545

Marked Petitioner's Exhibit 307 and reads as follows:

"*Lincolnshire* agents say room all engaged."

MR. BALDWIN: I offer in evidence cable of September 1st, 1910, from Arbuckle Brothers, New York, received by Louis R. Gray, Arbuckle & Company, Rio.

Marked Petitioner's Exhibit 308 and reads as follows: 5546

"Make a tender Lamport & Holt steamers to make a case. Stop. Consider *Crown Prince* forcing us to send *Horsley* via New Orleans. Damages are 2,000 dollars."

MR. BALDWIN: I offer in evidence cable of September 1st, 1910, from Arbuckle & Company, Rio to Jamison, Arbuckle Brothers, New York.

Marked Petitioner's Exhibit 309 and reads as follows:

"Lamport & Holt steamers, agents have informed us steamer room all engaged." 5547

MR. BALDWIN: I offer in evidence cable to Louis R. Gray, Arbuckle & Company, Rio, from Arbuckle Brothers, New York, dated September 26th, 1910.

Marked Petitioner's Exhibit 310 and reads as follows:

"Tender shipment *Spanish Prince* via New Orleans, October 20th. In order to make a case also try others."

MR. BALDWIN: I offer in evidence cable of September 27th, 1910, to Louis R. Gray, Arbuckle & Co., Rio, from Arbuckle Brothers, New York. 5548

Marked Petitioner's Exhibit 311 and reads as follows:

"Prince Line steamers, agents notified us and others steamers berthed Santos, Rio for United States, *Corsican Prince*, 1st October, *Eastern Prince* 15th October, *Indian Prince* 31st October. New York, *Spanish Prince* 20th October, via New Orleans. In reply to their letter tendered *Spanish Prince* at current rate of freight. Santos coffee

5549 5,000, Rio coffee 5,000. Their reply refers us, Prince Line steamers, agents Brazil."

MR. BALDWIN: I offer in evidence cable from Arbuckle & Company to Jamison, Arbuckle Brothers, New York, dated October 4th, 1910.

Marked Petitioner's Exhibit 312 and reads as follows:

"Agents in of Santos syndicate do not reply our tender. Shall we try legal proceedings to force reply?"

5550 MR. BALDWIN: I offer in evidence cable to Louis R. Gray, Arbuckle & Company, Rio, from Arbuckle & Brothers, New York, dated October 7th, 1910.

Marked Petitioner's Exhibit 313 and reads as follows:

"If not too expensive take counsel's opinion if necessary. What is the basis. What is the legal opinion as to grounds for action? What is estimated expense? What do you suggest?"

MR. BALDWIN: I offer in evidence cable of October 8th, 1910, from Arbuckle & Company, Rio, to
5551 Jamison, Arbuckle Brothers, New York.

Marked Petitioner's Exhibit 314 and reads as follows:

"Do not think well of trying legal proceedings to force reply to our letter (of) Lawyer's opinion Brazilian lawsuit to compel them to accept coffee will probably last for some time. In (or for) 5 years In (or for) 10 years. Expenses will be heavy and grounds not strong under laws Brazilian."

MR. BALDWIN: I offer in evidence cable of De-
5552 cember 2nd, 1910, to Louis R. Gray, Arbuckle & Company, Rio, from Arbuckle Brothers of New York.

Marked Petitioner's Exhibit 315 and reads as follows:

"Until further notice tender 500 bags Rio & Santos coffee every Lamport & Holt steamer, Prince Line Steamer syndicate. Particularly via New Orleans. Prove tendering. Witness want good evidence. Keep records, details. Prove any ignoring."

MR. BALDWIN: I withdraw my objection to the

cablegrams read by the witness, on the ground that they are not the best evidence. 5553

Q. Now, Mr. Gray, these cablegrams other than offered both by the Government and by yourself, have you brought with you practically all of the cables that you could find that had reference to the tender of coffee down there to the syndicate lines? A. Yes, sir.

Q. And so far as you know they give the reasons for the offers? A. Yes, sir.

Q. And both as to the Rio house and the Santos house? 5554
A. Yes, sir, and all telegrams were sent direct to Rio from New York and no communications direct between Santos and New York.

Hearing adjourned to October 2nd, 1913, at 10:30 o'clock A. M.

October 2nd, 1913.

By consent hearing adjourned to Friday, October 10th, 1913, at 10:30 o'clock A. M. 5555

5556

5557 New York, October 10th, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

Messrs. BURLINGHAM, MONTGOMERY & BEECHER; by Charles C. Burlingham, Esq., and Charles Burlingham, Esq., for Frederick T. Busk, *et al.*

5558 Messrs. CONVERS & KIRLIN; by J. Parker Kirlin, Esq., M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

Messrs. SPOONER & COTTON; by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

MR. MONTGOMERY: I offer in evidence cable dated March 13th, 1912, to the London conference from the Brazil conference here, reading:

"Braconfer London Lloyd chartered *Bellucia* seven shillings ten pence redelivery Plate duplicate sent to Knott, Newcastle-on-Tyne."

5559 Also cable dated April 22nd, 1912, from the New York conference to London, reading:

"Braconfer London Lloyd chartered *Ribera* six shillings three pence redelivery Plate *Clivegrove* six shillings nine pence redelivery Santos both prompt duplicate sent to Knott Newcastle-on-Tyne."

Also cable from London dated April 23rd, 1912, reading:

"Advance tariff rates by ten per cent."

5560

JAMES A. FARRELL, called on behalf of the Petitioner, being first sworn, testified as follows:

DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Farrell, you live in New York? A. Brooklyn.

Q. You are the president of the United States Steel Corporation? A. Yes.

Q. You have been connected with that corporation for a great many years? A. Since its organization.

Q. You have also had to do with the United States Steel Products Company? A. Yes; I was president of that com-

pany from its organization in 1903 until February 1st, 5561
1911.

Q. And then you became the president of the Steel Corporation? A. The Steel Corporation.

Q. Now, that latter corporation—I mean the Steel products Corporation—is engaged in what business? A. In exporting products of the subsidiary companies of the United States Steel Corporation.

Q. Has that company heretofore while you were connected with them, been engaged in exporting products of the subsidiary companies of the Steel Corporation to South American ports? A. Yes, from the beginning. 5562

Q. And particularly to Brazil? A. Yes; Brazil among other countries.

Q. It has been part of your duties to keep yourself in touch with the transportation rates? A. Yes.

Q. Not only from New York or any of the American ports to Brazil, but from European ports as well? A. Yes.

Q. What facilities have you, or do you maintain, for the purpose of keeping track of these transportation rates, ocean rates, both from this country to Brazil and from Europe—that is, including the Continent and United 5563
Kingdom? A. The United States Steel Products Company maintain a number of offices in Europe. Their principal office is at London, where we maintain other departments. We also have an office at Antwerp and offices in Copenhagen and other places, Barcelona, Christiania, and so forth. Our London office, our freight department there, keep us informed with respect to freight rates current from Europe to the countries that we are shipping to. We get our information also in New York from various sources. 5564

Q. Is it a part of these information offices, or whatever you may choose to call them, to keep in close touch with the fluctuations of ocean rates? A. It is a necessity. As a general rule it is not as difficult to sell the goods as it is to transport them, especially considering the volume that we deal with. We export two and a half million tons of material per annum from this country, and then it requires a great many vessels. Last year we shipped in upwards of 3,000 vessels, small and large quantities.

Q. That is, to various parts of the world? A. All over the world.

5565 Q. Now, as the head of this Steel Products Company have you yourself kept particular track of the varying rates or the rates, rather, as they obtained from abroad? A. I have given up to it my pesonal attention because it is essential that I should be posted on freight in order to properly make the selling price.

Q. Have you kept up that same interest in the question of rates since you became the president of the Steel Corporation? A. Yes.

Q. Now, the United States Steel Corporation ship a
5566 large amount of goods to Brazil? A. A pretty large quantity; it varies.

Q. What facilities have it, or the Steel Products Company, which sells this product for export, heretofore availed themselves of in the transportation of their products to Brazilian ports? A. We have availed ourselves of all the existing facilities and at times have chartered boats into Brazil. We have also sent steamers that we own ourselves and we have recently established a line to Brazil.

Q. How recent is that? A. In the early part of September; the first vessel sailed on the tenth of September.

5567 Q. How long, if at all, have you been sending your products—I am speaking of general products of the Steel Corporation—either through the Steel Products Company or however it is done—how long have you been, if at all, been sending your products over what is known as the conference lines here? A. I am not in an intelligent position at all as to the length of time the conference has been established, but we have——

Q. 1908? A. Utilized all the facilities that existed.

Q. You have been shippers over the conference lines?
5568 A. Yes.

Q. And I mean by conference lines, the Lamport & Holt, the Prince Line and the Hamburg-American Line? A. Yes.

Q. What is the nature of the products particularly that your company sells and transports to Brazil? A. Largely railway material, galvanized sheet iron, large quantity of barb wire; tin plate, pipe and a general line of steel products.

Q. Any pig iron? A. And pig iron.

Q. Now, from what places, that is from what ports, have you been accustomed to ship products to Brazilian ports

when you patronize or have patronized what you call the conference lines? A. From New York. 5569

Q. And where would the products which you shipped by the conference lines by way of New York originate? A. Largely in the Pittsburg district.

Q. I understand that your corporation has a large number of plants in various parts of the country? A. Yes.

Q. The Pittsburg district, what class of products originate there that you have heretofore been sending to Brazil? A. Railway material, pipe, tubular goods which includes, of course, trolley poles and a large variety of tubular products; galvanized sheet iron; tin plate; wire products of all kinds; practically all lines of manufactured iron and steel; street railway materials and so forth. 5570

Q. Where does the pig iron that you ship to Brazil originate? A. Birmingham, Alabama.

Q. And in order to get that to Brazil do you have to send that to New York too? A. No, that is sent via New Orleans and comes to New York and then goes to Brazil.

Q. Explain that a little more fully, Mr. Farrell, the *modus operandi*? A. We ship the pig iron from Birmingham to New Orleans; it is placed on board steamers there which make a voyage to New York and afterwards the voyage to Brazil. 5571

Q. Are those the steamers of the conference lines? A. I think—yes, they apparently are the Lamport & Holt steamers and the Prince Line steamers.

Q. Am I correct in understanding that when the boats of these respective conference lines—the conference boats—come to New Orleans they come to discharge some other cargo? A. They come there with inward cargo and take our pig iron. 5572

Q. Of what nature? A. Coffee.

Q. And then they take your pig iron and carry it to New York and then back again, or back, I should say, to Brazil; is that it? A. Yes, that is the journey.

Q. How long has that particular itinerary been observed by the conference lines in handling pig iron? A. I am not sufficiently informed as to that. Our shipment of pig iron to Brazil has been a recent development.

Q. Do you know how the rate which you pay for that shipment or those shipments by way of New York from New Orleans to Brazil is arrived at? A. No, I do not. We ask

5573 the lines for a rate and they quote us a rate. The first rate we paid was $7.20 a ton; the rate has since been reduced to $6 and then I think it was $5.40.

Q. How recent was that? A. On the 22nd of September.

Q. You are speaking of the New Orleans rate? A. Yes. I would not be definite as to that. The last rate that was made on pig iron was $5.40. There was a revision of steel rates on the 22nd of September and whether it was simultaneous or not I do not recall.

MR. KIRLIN: You mean you are not definite as to
5574 the date?

THE WITNESS: As to the date from New Orleans.

Q. Do you know how the rate that you were paying prior to this reduction compared with the New York rate to Brazil? A. No, I do not, not prior to the reduction. At the present time the rate is the same.

Q. Just the same? A. Just exactly.

Q. Now, your corporation has large plants in the south? A. Very large plants at Birmingham.

5575 Q. Do they manufacture diversified products? A. No, not as yet. The particular output is pig iron, rails and about 100,000 tons per annum of plates and bars and shapes. We have expended very large sums of money since the Steel Products acquired the plant, some $23,000,000, and have in contemplation the expenditure of about $15,000,000 more to diversify the products which we introduced there.

Q. What particular part of your plant, I mean by that the general plant of the Steel Products, is particularly adapted to supply your customers in South American ports
5576 and particularly Brazil, or would be? A. Well, a number of plants in a central zone would do that.

Q. Does Birmingham at the present time or would it have—does Birmingham at the present time have any particular facilities or is it a natural point of production to supply any of your products to Brazil? A. Pig iron and rails.

Q. And at the present time with the exception of pig iron that is not supplied by the Birmingham plant? A. No.

Q. That originates in the Pittsburg District? A. And other mills.

Q. In the event that a regular line was established from

the Gulf ports to Brazil what advantage, if any, would 5577
that be to your corporation in developing that of South America and particularly Brazil? A. It would be a large factor.

Q. You mean an advantageous factor? A. Very.

Q. And the absence of such a line, a regular line, would be disadvantageous? A. Yes, in the sense that in the case of pig iron or smaller quantities of material it would be required to be shipped by berth steamers and it would have to be shipped to New York.

Q. It is disadvantageous, is it not? A. Yes. 5578

Q. In other words, you have got to either charter steamers on the berth at the Gulf ports or transship, as you have testified before on these conference lines, first to New York, is that the idea? A. To carry bulk material in quantity. You could not put 5,000 tons of railway material in a steamer——

Q. There are no regular lines, of course, from the Gulf ports direct to Brazilian ports? A. No, we send a great many chartered steamers to Brazil from Pensacola and Mobile and occasionally have steamers call at Savannah.

Q. The fact then that there is no regular line, does it in 5579
any way affect the development of your South American trade in relation to your plants that are contiguous to the Gulf ports? A. A regular line from the Gulf would increase our opportunities to do business from our Birmingham mills.

Q. In what way? A. By enabling us to ship moderate quantities of material, 500 or 1,000 ton lots, 200 and 300 and so forth.

Q. The moderate shipments that you speak of have to be supplied from some other source of production? A. Yes. 5580

Q. Now, Mr. Farrell, have you ever had negotiations with any of the conference lines with reference to your shipments? A. Frequently.

Q. Have there ever been any times when they have sought to negotiate with you to take all of your shipments? A. Yes, from time to time they expressed a desire to handle all of our business.

Q. You never have given them all of your business or confined yourself to them, have you? A. No; we have shipped by all of the facilities that offered.

Q. With whom did you usually have your negotiations

5581 with the conference lines? A. With the representatives of the lines; sometimes through our office people, the freight agent, or our people in the freight department; they deal with the people in the offices of these various lines.

Q. What has been your experience with them in reference to their taking full cargoes of your material? A. They have frequently offered to charter vessels for us. We thought that was a function we could utilize ourselves.

Q. In other words, you saw no advantage in having them charter vessels to take full cargoes of your product? A.
5582 No; we would be on the same basis they would be on.

Q. That you could charter just as easily and as cheaply as they could? A. The same facilities.

Q. What, if anything, occurred with reference to negotiations to ship over their regular lines full cargo? A. That would be an impracticable thing because they have general cargo to take care of, and as a rule general cargo steamers do not require more than 1,500 to 2,000 tons of bulk cargo —steel products to be exact.

Q. And why is that? A. Because it is not economical.

Q. Will you explain a little more fully in what sense
5583 it is not economical? A. A full cargo of steel would put a vessel down to her marks and leave a large quantity of space that could be filled by other merchandise.

Q. At a higher rate? A. At a rate commensurate with the character of the products to be shipped I should say.

MR. KIRLIN: That could not be taken I suppose?

THE WITNESS: Not if the ship was full of steel.

MR. KIRLIN: Not if she was down to her marks with steel?

THE WITNESS: No.

5584

Q. Your heavy products or bulk cargo would put a vessel down to its marks and not consume all the space? A. Yes.

Q. While if the vessel had a part cargo of bulk she would not go over the mark and it would leave space for general cargo? A. It is an advantage to the ship to have a certain amount of heavy material, especially like rails which stow in about 10 or 12 cubic feet, I believe, perhaps 9.

Q. Isn't it your experience that part of the cargo, or

general cargo, is at a higher rate than bulk cargo? A. 5585
Yes.

Q. So that it is distinctly to the advantage of the owner of the vessel to reserve a part of his space for general cargo? A. Yes.

Q. Has any other conference lines ever offered any of their vessels on the regular lines to take full cargo? A. Not within my recollection. They have offered to charter vessels.

Q. As a shipper is it to your advantage to ship over lines that will not take your full cargo? A. Only in so 5586
far as the facilities they offer us. The character of our business is such, the competition we have with the large number of European steel manufacturers is such, that we are obliged to charter in the open market. The conference lines do not control all the vessels in the trade; there are five lines outside of the conference in Europe to-day and have been for some time.

MR. KIRLIN: What conference are you referring to now?

THE WITNESS: The European conference.

MR. KIRLIN: To where? 5587

THE WITNESS: From Europe to Brazil. The Antwerp Steam Navigation Company, Horn Line, the Royal Belgium Argentine Company, Roth Brothers and Fred Drughorn, a man who controls the shipment of large quantities of railway material through relations which his people have in Brazil.

Q. In seeking business in Brazil what are the elements that you have to take into consideration in order to do the 5588
business at a profit? A. In the first instance, unless we can give the parity of the European price we cannot do the business. Our prices fluctuate from day to day and dependent upon the desirability of the business and the kind of business and the suitability of the business to our plants.

Q. In using the word "parity" with European rates, you do not mean necessarily parity with the rate charged by the conference lines? A. No, I mean the parity of the price offered by our competitors in Europe.

5589 MR. KIRLIN: For the steel?
THE WITNESS: For the steel.

Q. You are speaking about the laid down price, are you not? A. That amounts to practically the same thing.

Q. You say that recently you have established a line? A. Yes.

Q. And from what port? A. From New York.

Q. And with reference to this pig iron business from the Gulf ports, does that make any change in the handling of that? A. We expect it will. We expect to have these
5590 steamers call at Savannah. The rate from Birmingham to Savannah is $1.50 a ton.

Q. Have you statistics that show the rate or rates on your products that were charged by the conference lines, or quoted by the conference lines, up until the time, or about the time, that this new venture of yours was started? A. I had some data compiled at your request.

Q. Have you got it with you? A. Yes, sir. (Producing.)

MR. BALDWIN: Do counsel object that Mr. Montgomery shall examine the witness on these sta-
5591 tistics?

MR. KIRLIN: No.

By Mr. Montgomery:

Q. These papers that I show you lettered "A" to "J" inclusive, are statements of rates paid by the Steel Products Company to the conference lines to the various ports in Brazil, are they not, Mr. Farrell? A. Yes, all the ports at which they called.

Q. The first column on each sheet is a statement of the
5592 article? A. Yes.

Q. And in the next, the other column on the page, they show the months in which the shipments occurred and under those months the rate? A. The rates paid.

Q. And those comprise all of the shipments that you have had by the conference lines in that period for the years 1908 to 1912 inclusive? A. Substantially so. This is a compilation from our records and there may have been something overlooked.

Q. But it was made under your direction? A. Under my direction and in many instances I examined the original sources of information.

Q. This sheet is a recapitulation of the other sheets? A. Yes. 5593

MR. MONTGOMERY: I offer this recapitulation in evidence.

Sheet headed "Recapitulation (conference lines)" marked Petitioner's Exhibit 317.

MR. MONTGOMERY: I offer in evidence these statements lettered from "A" to "J" as follows:

Package of sheets headed "Rio de Janeiro (conference lines), 1908."

Marked Petitioner's Exhibit 317-A. 5594

Also statement headed "Santos (conference lines), 1908."

Marked Petitioner's Exhibit 317-B.

Also statement headed "Pernambuco (conference lines), 1908."

Marked Petitioner's Exhibit 317-C.

Also statement headed "Pelotas (conference lines), 1908."

Marked Petitioner's Exhibit 317-D.

Also statement headed "Florianapolis (confer- 5595 ence lines), 1909."

Marked Petitioner's Exhibit 317-E.

Also statement headed "Rio Grande do Sul (conference lines), 1909."

Marked Petitioner's Exhibit 317-F.

Also statement headed "Porto Alegre (conference lines), 1909."

Marked Petitioner's Exhibit 317-G.

Also statement headed "Pelotas (conference lines), 1910."

Marked Petitioner's Exhibit 317-H. 5596

Also statement headed "Sao Francisco do Sul (conference lines), 1909."

Marked Petitioner's Exhibit 317-I.

Also statement headed "Paranagua (conference lines)."

Marked Petitioner's Exhibit 317-J.

Q. Now, did you at our request have prepared under your direction a similar statement showing your shipments by the Lloyd Brazileiro Line? A. Yes.

5597 Q. And that is in the same form, is it not? A. Same form.

Q. And this that I show you is the—— A. That is the copy.

MR. MONTGOMERY: I offer that in evidence.

Sheet headed "Recapitulation (Lloyd Brazileiro)" marked Petitioner's Exhibit 318.

MR. BALDWIN: You have not made any comparison of rates, have you?

THE WITNESS: Only approximately.

5598

Q. That is to say, you have made an approximate comparison of the rates? A. Over a period of about five years.

Q. What does that indicate, Mr. Farrell? A. About 100 per cent. increase.

Q. That is on an average? A. An average.

Q. Is that increase uniform to all of the ports? A. I think the increase is greater to Rio and Santos than to South Brazilian ports.

Q. Do you know of any reason for that, Mr. Farrell?

5599 A. No, I do not.

Q. The charter rates to the South Brazil ports have not increased in any different proportion than to Santos or Rio, have they? A. Very few steamers go to South Brazil ports. That is to Pelotas and Rio Grande do Sul.

Q. In your judgment would there be anything in the charter market conditions which would bring about a different increase in the cost of carrying freight to Rio and Santos than in the cost to the Southern ports? A. Well, charter rates, that is, full cargo steamers, have gone up perhaps 100 per cent.; perhaps a little more than that in

5600 some of them here.

Q. I guess you did not just get my question, Mr. Farrell. Charter rates perhaps have some influence on it. I assume have some influence on the cost of carriage to all the ports. My question was whether the advance in charter rates would have any different effect on the cost of carriage to Rio and Santos than it would have upon the cost of carriage to Rio Grande do Sul and Pelotas and so on? A. It would be a matter of opinion. If the Port of Rio or the Port of Santos was congested with steamers it might result in slower discharge and possibly there might be a reason for the higher rates to those ports.

Q. Aside from that, would there be any reason for that difference? A. I cannot see any reason. I do not know of any reason. 5601

Q. Mr. Farrell, before I leave that question, has the cost of chartering a vessel for Florianapolis increased any less than the cost of chartering a vessel for Rio? A. I am not sufficiently informed to answer that question for the reason that I have never had occasion to charter any vessels for Florianapolis and I do not know of any business at a port like Florianapolis that would result in a full cargo.

Q. Then in the cost of actual tonnage to these Southern ports you would say, wouldn't you, that there has been no difference? A. It would be relative, depending on the distance and the bunkering facilities and a number of other items. 5602

Q. What I mean, aside from the possibilities that you speak of, of congestion at the ports, aside from that there would be no advance at one place that would not be proportionate at the other? A. I see no reason why there should be.

MR. MONTGOMERY: I ask to have marked for identification this statement, compilation of the different rates charged to the Steel Company on their shipments of barb wire to the various Brazilian ports and the percentage of increase at each of the ports. 5603

Marked Petitioner's Exhibit 319 for identification.

By Mr. Baldwin:

Q. Now, Mr. Farrell, did you receive any communication from the agents of the conference lines with reference to the reduction of rates in September? A. Our office, the United States Steel Products Company, received it. 5604

Q. I show you what purports to be a letter of September 22nd, 1913, from Funch, Edye & Company; did your office receive that? A. Yes. It was received at our office and sent to me for my information and returned to them.

Q. Now, have you at our request had noted on that letter the rates that subsisted for the articles mentioned therein just before or just previous to the receipt of the letter? A. That were the existing rates?

Q. Yes? A. Yes.

Q. That is in lead pencil is it not? A. Yes.

5605 MR. BALDWIN: I offer that in evidence with the lead pencil notation.

Letter headed "Funch, Edye & Company," dated September 22nd, 1913, addressed to Messrs. United States Steel Products Company, 30 Church Street, City, marked Petitioner's Exhibit 320.

Q. Did you receive this letter from Paul F. Gerhard & Company in September that I now show you? A. It was received at our office and sent to me for my information
5606 and read and returned.

Q. Were the current rates in force also noted in lead pencil at the time? A. Yes, the rates existing prior to this reduction.

MR. BALDWIN: I offer that in evidence.

Letter headed "Paul F. Gerhard & Company," dated September 22nd, 1913, addressed to "U. S. Steel Products Company, freight department, New York City," marked Petitioner's Exhibit 321.

5607 Q. Mr. Farrell, were these communications, Exhibits 320 and 321, sent to you, or these rates reduced, upon any request of the Steel Company? A. No.

Q. It was a voluntary offer upon their part so far as you know? A. It was probably following the trend of the market.

Q. I call your attention to Exhibit 320, that is the Funch, Edye letter, which shows—which says to the effect that we have received advices of reduction in freight rates on special commodities in which you are interested. Do you know whether or not they made any general reduc-
5608 tion on their general cargo rates? A. I do not.

Q. When was it that this new line of yours was established? A. Could I refer to the charter parties?

Q. You can; anything you want to that will refresh your recollection? A. The first steamer sailed on the tenth of September. I believe the steamers were chartered in August. Five of them I believe. (After examining papers.) Yes, the 29th of August.

Q. When was the company formed? A. It is not an incorporated company; it is a trade name.

Q. What is the trade name? A. The correct trade name is the United States and Brazil Steamship Line. It has

been advertised as a company, but that was an error on 5609
the part of the people that prepared the advertisement.

Q. After it was formed—it was advertised, the fact that it had been formed? A. No; there was no announcement of that fact. The usual application was made to the County Clerk's office to register the name of the line.

Q. Does this line of yours contemplate carrying general cargo? A. Yes. One of the steamers that sailed yesterday, the *American*, carried general cargo. Perhaps a thousand tons of measurement cargo.

Q. The first boat you say sailed on September 10th? 5610
A. Sailed on September 10th, and arrived in Rio de Janeiro on October 4th.

Q. How many boats have you under charter by this new line? A. Four. They are a continuing charter, and some others.

Q. Up to the time you had formed this new corporation or chartered boats, or that they were on the berth, or sailed from here, had you received any notification or quotation from any of the conference lines that they had reduced their rates before that time? A. Not within my recollection. 5611

Q. In point of time then these communications, Exhibits 320 and 321 followed the publicity of the fact that this line had been started? A. Yes.

MR. KIRLIN: We have the sailing of the first boat already on record.

Q. You have already testified, Mr. Farrell, that the bulk of the products of the United States Steel Corporation which go to Brazil are shipped from the Pittsburg territory? A. Yes. 5612

Q. Do you know what the rail rate is from Pittsburg to New York? A. $1.75 per ton on railway materials and heavy products.

Q. What, if you know, is the rail rate from Birmingham to New Orleans? A. $1.40.

Q. And to Mobile? A. $1 per ton.

Q. What is the situation with reference to getting chartered ships at Mobile, any difficulty about that? A. No difficulty; occasionally the rates are higher upon charters to the Gulf than they would be to the seaboard—the Atlantic seaboard.

5613 Q. For what reason? A. Distance.

Q. Does that in any way affect the cost of the chartered ships to Mobile? A. It depends a good deal; sometimes ships are there seeking charters. It is all a question of negotiation.

Q. They pick them up at Mobile, of course? A. Yes, or they may be bound there.

Q. If there were regular lines—coming back to that subject again at Mobile—what proportion of the steel products of your firm in general would go by way from
5614 the Birmingham plants rather than from the Pittsburg plants? A. About 25%; enough for one or two sailings a month from the Gulf.

MR. BURLINGHAM: 25% of the total from Birmingham?

THE WITNESS: 25 would go from Birmingham, or could, if there was a line there.

MR. KIRLIN: 25% of the Brazilian exports, do you mean that?

THE WITNESS: Yes. That would also apply in
5615 other markets here. We expect to have our Brazil steamers call at Savannah for the purpose of picking up this cargo.

Q. What is the difference in the rail rate, if any, from Birmingham to Mobile, than from Pittsburg to New York? A. 75c a ton; also the same from Pensacola. We dwell on Mobile and other points.

Q. I am using Mobile as a more contiguous port.

MR. KIRLIN: Is the rail rate the same from Pen-
5616 sacola?

THE WITNESS: The same.

Q. What difference would this rail rate mean to your company, how much based upon this amount of tonnage that could or would go from Birmingham? A. In some commodities it would be a saving; in others it is a question of the cost of production. The cost of production is not always the same.

Q. In some it would be quite a saving? A. In pig iron.

Q. And in pig iron how much would it be? A. perhaps a matter of 30c a ton, which is important.

Q. Any thing to offset that? A. I don't understand that. 5617

Q. You say there will be this saving of about 30c a ton, is that what you said? A. Yes, on pig iron.

Q. Is there anything to offset that? A. Not if the facilities existed there.

Q. I mean, I am assuming if there were facilities there? A. Steaming distance is greater from the Gulf to Rio than it is from New York, a couple of hundred miles—300 perhaps—2 to 300.

Q. That would not be equal to the difference in cost between the rail rate that you have just shown? A. No. 5618

Q. In your judgment, Mr. Farrell, is there a sufficient amount of cargo which is tributary to the Gulf ports sufficient and available to operate a line from there? A. Undoubtedly.

Q. You testified a while ago, Mr. Farrell, that they are not doing a regular service from the Gulf ports, that you chartered steamers there heretofore? A. Chartered quite a good many; whole cargoes.

Q. Did those chartered steamers have any cargo back? A. Most of them were chartered for the trip down. 5619

Q. Does that in any way affect the rate, the fact that they are simply chartered for the trip down? A. That is largely a matter of opinion. Of course, the charter rates from here are higher than the coal charters.

Q. That is because the charters have return cargoes? A. Largely. I should say Brazil ships about 100,000 tons of bran per year to England and Turkey; it ships 50,000 tons of cotton; ships large quantities of other commodities to Europe that do not come here at all and, of course, they have return cargoes available.

Q. Then there are only two commodities, are there, that 5620 are available for return cargoes to American ports, coffee and manganese ore? A. No, there is rubber and other commodities.

Q. They are the only two large, are they? A. They are the only two bulk cargoes; manganese ore and coffee.

Q. Is it your opinion that if there were available return cargoes, say of coffee, to the American ports to the tramp or chartered boat that it would affect the rate by diminishing it? A. Well, it would all depend on whether the people operating the service would care to carry the coffee.

5621 Q. Assuming that the coffee was offered at a rate which would be profitable to the carrier? A. If it was offered at a reasonable rate that would yield a return to the steamer there would probably be competition for it.

Q. Then the absence of that to the owner of the charter steamer or to any other than these conference lines would mean an enhancement of the offered rate, wouldn't it, the charter rate? A. Not necessarily in my opinion. It might result in competition for the coffee which would make it a very undesirable cargo.

5622 Q. But assuming that there were coffee that was available in competition to be shipped to the American ports, wouldn't that affect the rate which you would have to pay for the charter steamer? A. It is largely a matter of opinion.

Q. Well, what is your opinion about it? A. My opinion is that it would not.

Q. It would be just the same? A. Yes.

Q. And why is that? A. Well, as a matter of fact, at the present time we have opportunity to carry coffee and we would not be bothered with it.

5623 Q. I don't mean that. I say supposing that it was at a reasonable rate? A. I don't think there would be a reasonable rate if there was very much competition for it.

Q. Mr. Farrell, assuming that the evidence in this case is that from 85 per cent. to 90 per cent. of all the coffee that was shipped to the United States is carried in conference line boats pursuant to agreements that involve rebates to the shippers and, therefore, work practically to the effect that they have 80 to 90 per cent. of the coffee; assuming that to be a fact, therefore, that it is not open
5624 competition, if that coffee trade was then not bound up by these agreements and open to competition, how would that affect the charter rate?

MR. KIRLIN: Same objection. We object to that question on the ground that the answer would be incompetent for the reason that the question is based upon assumption not proven.

MR. BALDWIN: If my assumption is not right, of course, you have a good objection to it.

A. I am not familiar with the circumstances and consequently would hesitate to express an opinion upon a mat-

ter on which I am not sufficiently informed. I would not 5625
like to express an opinion upon an assumption.

Q. Generally speaking, the absence of return cargo from one port to another would affect the charter rate, would it not? A. It certainly would if return cargoes were not available.

Q. Then it would result in a higher rate in your opinion? A. Yes.

Q. Now, who would bear that burden? A. Generally the man that sells the material.

Q. That is, the owner of the cargo, is that right? A. Not 5626
necessarily the owner of the cargo. If we were selling the cargo of rails to the Central Railway of Brazil and it cost us 19 shillings to freight the cargo and our competitor in Europe was in a position to freight them for 17 we would have to absorb the difference in price.

Q. Then, in that case, being the owner of the cargo the burden would fall upon you? A. Yes.

Q. Well then, from the manufacturers standpoint whether or not you would consummate a sale of your commodities would depend upon whether or not you could get a rate by which you could be somewhere on an 5627
equal footing with your competitor? A. Yes, most important.

Q. And if there was a differential in the freight rate in any way operating in favor of your competitor, unless you could in some way equalize it it would be your detriment, wouldn't it? A. Yes.

Q. And might result in your not taking the business? A. Yes.

Q. Now, Mr. Farrell, from your standpoint as a matter of fact—from your standpoint as a manufacturer and ship- 5628
per would it be to the interest of your company to have a single contract with a carrier company for your commodities? A. No. Might I ask a question?

Q. Yes? A. Just before I came down I dictated my answer to that question. Shall I read it?

Q. Very well? A. Steel shipments have to move to meet the requirements of sales. Our competitors do not have contracts with steamship lines to carry all of their shipments, but are always in position to take advantage of lower charter rates. This I have here—cargoes already sold and not subject to the foreign competition can be

5629 contracted for, but that is not the case with steel products, and one of the disadvantages of contracting ahead is that a fixed rate of freight is established on which bidders must be secured against competitors who are in a position to take advantage of fluctuations in the freight market. If the freight market is higher than the contract rates we would compete at a higher rate than the contract owners, but if the freight market is lower than the contract rates we cannot compete unless we assume a loss incurred through having to pay higher freight rates than our com-
5630 petitors.

Q. So then, as far as the steel products are concerned, and, therefore, from their standpoint as a shipper, it would be to their distinct disadvantage to confine themselves by single contract for a fixed rate? A. It would.

Q. Now, would this situation result—of a single contract—in curtailing your facilities in any way? A. You mean our general facilities for chartering or——

Q. Well, yes, whatever it may be; the whole thing? A. It would naturally restrict our business. As a matter of fact we have never had a contract with conference lines
5631 or other steamship interests to carry all of our material. We have always shipped by all the facilities at hand and in addition to which we have chartered steamers as occasion required.

Q. The nature of your business then demands that you should have a free opportunity to avail yourselves of every single facility for shipment? A. Not only that, but the nature of the competition which we have with a large number of manufacturers in Europe, who avail themselves of these lines of steamers that are outside of the European
5632 conference. There are five lines outside of the European conference to Brazil.

Q. Would it be any disadvantage to your company to be deprived of using the Lloyd Brazileiro, bearing in mind the general question of confining your shipments to a single contract? A. It is difficult to answer. It would depend upon the volume of business to some extent.

Q. The Lloyd Brazileiro is a shipping facility, is it not? A. Yes.

Q. And you deem it advisable to use them whenever it is necessary? A. We use them. We give them about 25,000 or 30,000 tons of material a year. Or ship 25,000 to 30,000 tons of material by their line of steamers.

Q. Then, in no aspect of the case would a single contract 5633
at a fixed rate be advantageous to your business? A. It would not. That applies to all trade, whether to Brazil or any other part of the world.

Q. How do the rates charged by the Lloyd Brazileiro compare with the rates that you have been paying conference lines? A. Up to the 22nd of September they were lower; to-day the Lloyd Brazileiro rates are higher than the conference lines.

Q. That is since the last they have offered you? A. Since the 22nd of September the conference line rates are 5634
lower than the Lloyd Brazileiro rates.

Q. You mean on these products which have been quoted to you? A. Yes.

Q. You do not pretend to say anything about the others? A. I know nothing about other products. These rates are a reduction from five to ten shillings a ton, or something like that.

Q. Mr. Farrell, have you had compiled a statement of the charter rates from 1913 from South Wales to South American ports and also the charter rates from Norfolk, 5635
Philadelphia, Atlantic City, Baltimore, Newport News to South American ports? A. Yes.

Q. Is this it? (Showing witness paper.) A. Those are the records that we keep regularly of the Cardiff coal charters and coal charters to this country; they serve as a basis for all weight charters. This is a copy I had prepared.

MR. BALDWIN: I offer this in evidence.

Sheet marked "Coal charters reported for Brazil, 1913," marked Petitioner's Exhibit 322. 5636

Q. I understood you to testify that coal charters form the basis—— A. Form the basis for all bulk cargoes.

Q. Coal is shipped very largely from South Wales to the South American ports? A. Very large quantities from Cardiff and Swansea.

Q. And coal shipped from this country? A. Yes, Norfolk, Newport News and Baltimore.

Q. Mr. Farrell, you, I think, have given the names of five different transportation lines from Europe to Brazil? A. Yes.

5637 Q. Outside of the European conference? A. Yes, but there are large numbers of charters for bulk cargoes, full cargo charters.

MR. KIRLIN: You mean beside those five lines?
THE WITNESS: Yes.

Q. So that your competitors in the Brazilian business, that is to say, manufacturing competitors in the Brazilian business, not only have the conference lines but these other five lines and a large number of charter vessels?
5638 A. Yes.

Q. So that in bidding for the business yourselves you do not necessarily look to what the conference lines abroad are charging, but also inform yourselves what the rates are that are being quoted by these competitive lines? A. Yes, and being large charterers ourselves we are in an intelligent position as to the character of the market and the rates paid to different places. We have from 35 to 40 boats on time charter all the time and own five boats.

Q. Are you in a position to state what class of cargoes
5639 those independent lines carry outside of steel, iron and such products? A. They carry general cargo; they carry steel products and cement and all sorts of material.

Q. Where do you meet your most prominent competition for rails and steel products? A. Belgium and Germany—Germany and Belgium, that is their importance.

Q. You also export coal, do you not, to Brazilian ports? A. We have not exported any. We are large miners of coal in the Birmingham district and furnish large quantities of bunker coal to different coaling stations.

Q. Do you know whether those lines that you have
5640 spoken of are what you call regular lines? A. I would call them regular lines.

Q. Mr. Farrell, there is a large amount of agricultural machinery that is shipped from the United States to Brazilian ports, is there not? A. The largest tonnage, of course, moves to Argentina. There is some moves to Brazil.

Q. Do you know where that class of machinery originates? A. Largely in the Central West, Chicago, Moline and different places; Milwaukee.

Q. In view of the difference of freight rates—do you

know what the freight rate is from Chicago to New York? 5641
A. Not accurately. I know the difference is about 7c per hundred pounds between—I don't know the rate on agricultural machinery. I can tell you the rate on any class of steel products from Chicago to New York.

Q. I know, generally speaking, what the difference in the rate from—— A. About $1.40 per ton.

MR. KIRLIN: From where?

Q. Do you know generally what the rail rate is from Chicago to New York? 5642

MR. BURLINGHAM: He has answered that.

Q. No, he said from Pittsburg? A. $1.75 from Pittsburg.

Q. And what is it from Chicago? A. $4.40.

Q. Do you know what the rail rate is to the Gulf ports? A. $3.40.

Q. A large difference? A. Yes, on steel products.

Q. There is a good deal of agricultural machinery that is made and produced nearer to the Gulf ports than Chicago, is there not? A. Yes; the freight rate is lower. 5643

Q. So that the natural avenue of shipment for agricultural machinery or any products originating in the middle west, say from Chicago down the Mississippi Valley, would be by way of some Gulf port to Brazil, would it not? A. If there is sufficient service. But there might be more freight going from here than from the Gulf and perhaps not as many steamers.

Q. Assuming that there were different facilities? A. Yes, and sufficient business.

Q. I assume that too? A. Yes. 5644

Q. Is there any regular service from any of the Gulf ports to the River Plate? A. Yes; the Munson Line operate a line from Mobile to the Plate, and there are also steamers sent from New Orleans to the River Plate by the various interests here in New York. The Houston Line, and I think the Prince Line—I am not certain of the Prince Line—and Holder, Weir & Boyd. I don't know whether Barber sends steamers or not, but I think all the lines send steamers except the Norton Line.

Q. But none of them to Brazil from those ports? A. None to Brazil.

Q. Lamport & Holt Line also? A. I don't know.

5645 MR. BALDWIN: I suppose the defendants' counsel will concede upon the record that the Lamport & Holt Line does.

THE WITNESS: I am not positive; I don't know that the Lamport & Holt operate steamers from New Orleans to the River Plate, so I cannot say that.

MR. BALDWIN: Mr. Burlingham, will you concede that?

MR. BURLINGHAM: We concede that.

5646 CROSS-EXAMINATION by Mr. Kirlin:

Q. When you have spoken in your testimony of shipments made by your company you have meant I suppose to speak entirely of export business with your Steel Products Company? A. Yes.

Q. The Steel Corporation as such does not do an export business? A. The Steel Corporation is not an operating company.

Q. The Steel Products Company is the company that ex-
5647 ports about, as you said, 2,500,000 tons of cargo annually? A. Yes; the United States Steel Products Company.

Q. And that I take it is for the most part what is technically known as dead weight cargo, is it not? A. Generally speaking; some goes by measurement, but not very much.

Q. That is, the great bulk of that would be cargo which could not be taken by ships without a certain loss of space? A. Yes.

Q. In any ship carrying full? A. I have testified to that.

Q. Have you stated about what the amount of the export to Brazil amounts to in tons? A. It varies according to
5648 the activity of the railway. It may run from 75,000 to 80,000 tons one year, and may be 250,000 tons another year. We have had some large contracts. We had one contract with the San Luis Caixas Railway for 36,000 tons, and we are now executing some very large contracts for the Central Railway of Brazil, the Paulista & Mogyana Railway.

Q. How recently were these large contracts for Brazil exports concluded—how recently these large Brazilian contracts? A. Within four or five or six months.

Q. And those I assume are being carried in large parts by this new line that you have put on? A. Yes. The first steamer was loaded entirely with rails and the other

steamers will probably take 5,000 tons of iron and steel— 5649
4,000 to 5,000.

Q. Is there any other shipper from the United States to Brazil, or to any other ports, served by the conference lines that ships approximately the quantity of dead weight cargo per annum that the United States Steel Products Company export?

MR. BALDWIN: If you know?

A. I don't know that.

Q. As a business matter I take it that you know there 5650
isn't any such shipper?

MR. BALDWIN: I object to that.

A. I could not say. I don't know. I don't know that there is; there may be, but I can't say.

Q. Could you tell us from any memoranda that you have approximately the amount of your shipments from the Birmingham plant to Brazil in the course of the last year, or estimated? A. I should say that—you say the last year?

Q. Yes? A. Oh, probably 60,000 tons. 5651

Q. And how large a proportion of that has gone in full cargo charter ships? A. Practically all of it with the exception of some cargo we are preparing to carry now in smaller quantities in these ships loaded at New York.

Q. Has it been the practice of the Steel Products Company whenever the nature of the business that it has to export admits of it, to send the loads in chartered ship loads? A. Only when the requirements of the contracts call for such quantities. We frequently have contracts that call for deliveries at the rate of 5,000, 6,000, 7,000, 8,000, or 5652
10,000 tons per month; sometimes a contract specifies that they shall come in one or two bottoms, or three bottoms; it is all a question of——

Q. Whenever at any given time or within any period you find that your commitments require the shipment of large tonnage I suppose you would ship by existing lines or with charter, whichever might be the most advantageous for the method of transportation of the particular lines of cargo that you have for that period? A. It would depend largely on the cost of carrying the freight; berth steamers are not in position to take full cargoes.

5653 Q. With reference to the operations from the Gulf region as compared with New York, you mentioned the charter; unless a vessel happens to be in the Gulf region seeking a charter, are normally somewhat larger than they are from the coast, for one reason on account of the additional distance that has to be traversed to get there; are there any other considerations that occur to you which would affect the difference in rate between Gulf ports and coast charter? A. Well, there would be some additional coal burned on the extra steaming distance. That is largely a question
5654 of probably the number of vessels available. We have chartered—sometime ago we chartered two ships to take railway material from Pensacola—chartered them within ten days of each other and there was a difference of four shillings and six pence in the rate. One steamer was not fixed for any business and the owner was seeking a charter and he evidently made a rate. The other people had the option of lumber or taking something else and they got a higher rate.

Q. As between the different Gulf ports which is the most advantageous port for making shipments or for carry-
5655 ing shipments originating, say, in the region of Birmingham? A. Pensacola. The depth of water is greater there.

Q. A better harbor and more water on the bar? A. Yes. We could not send a ship out of Mobile with much more than 4,800, perhaps 5,000 tons, and we would have to be very careful in coming out with 5,000 tons.

Q. And what can you take out of Pensacola? A. 7,000 to 8,000 tons.

Q. You say that you furnish bunker coal for those different ports; I presume that comes from the Tennessee
5656 Coal & Iron region? A. Yes, our Blockton mines.

Q. Where are they? A. Right outside of Birmingham.

Q. Do you know whether there is any difference in the bunker coal rates at the different ports in the Gulf? A. Yes; the cost of bunker coal at New Orleans is about $3.50 a ton; at Mobile and Pensacola $3 to $3.50 per ton.

Q. What is the New York rate? A. New York rate is about $3. It all depends on the quality of the coal. You can get coal here from $2.75 to $3.25. I should say the average rate alongside of the ship was $3 and then about $3.40 trimmed in—that is, loaded in the bunkers.

Q. You have not taken the trimming charge into ac-

count in the figures you have given for New Orleans and Pensacola? A. The facilities are different. Bunker coal in this port is loaded from barges, whereas at Mobile or Pensacola it is sent in from chutes. 5657

MR. BALDWIN: From the dock?

THE WITNESS: Yes, largely. There may be some wharves there where they—most of it is from the chutes.

Q. The rate on pig iron from the mills in Birmingham to Pensacola is $1? A. Yes. 5658

Q. And to Savannah how much? A. $1.50.

Q. What are the commercial reasons which make it preferable for you to stop your own ships at Savannah and take your Birmingham shipments from there rather than to have your line steamers go from Pensacola? A. Because the bulk of our material at the present time originates in the Pittsburg District, as I testified on direct-examination. You see, that at the Tennessee Coal & Iron Company plant at the present time we are producing largely pig iron and railway material. Now, we have to assemble these rails with certain accessories known as fish plates, track bolts, spikes, sometimes telegraph poles and a great variety of material which is not at present produced in Birmingham, but which we hope to produce there. 5659

Q. I suppose the freight rate on those things from the Pittsburg District to Pensacola are more than they are from New York? A. That is true.

Q. So that you find it economically more advantageous to operate the line from New York at present than it would be from Pensacola? A. It is a partial operation from New York. We start at New York and stop at Savannah on the way down. 5660

Q. That combination is more economical from the steamers standpoint at present than would be the operation of the line from Pensacola? A. No, we could operate steamers from Pensacola by carrying the railway materials from Pensacola. It is just a question of where we place the business, whether it is placed in the Pittsburg District or the Birmingham District.

Q. Part of it, or a large part if it, at present does come from the Pittsburg District? A. Of the diversified products, yes; sheets and tin plates and so on.

5661 Q. What I am trying to get at is from the examination Mr. Baldwin seems to think there ought to be a line going from Pensacola? A. I agree with him.

Q. And I am wondering why it is as you are starting a new line you do not start it from Pensacola instead of by way of New York and Savannah? A. We have not given that consideration. We might put some of these steamers into Pensacola perhaps. We can do that. There is no insuperable difficulty that I know of.

Q. There is nothing to prevent it if you find it economi-
5662 cal and more advantageous to do it that way? A. No.

Q. But, of course, the steamers that are now from New York carrying a certain quantity of general cargo at a higher rate of freight would not get a certain amount of that cargo if they were sailing from Pensacola, would they? A. I believe they would, because a great deal of this material we are carrying originates in the middle west.

Q. You mean general cargo? A. General cargo, yes.

Q. That is, the general cargo that you carry in the ships
5663 in addition to your own dead weight cargo? A. Yes.

Q. Since your own line has been chartered are you still utilizing the other facilities afforded for shipment to Brazil? A. To the best of my knowledge we are.

Q. The Lloyd Brazileiro and conference lines? A. Yes.

Q. As best suits your convenience? A. Yes. We ship by other lines when they have steamers. For example, people in Philadelphia have steamers; we ship by all lines.

Q. You said there was a reduction of rates made, and they were quoted to you from the conference lines on the 22nd of September, reductions from Funch, Edye & Com-
5664 pany and Paul Gerhard & Company; about what was the amount of those reductions from the previous rates? A. From $1 to $2.40 a ton I think on one article, and a very substantial reduction.

Q. Do you know whether there was any general reduction or decline in the steel trade freight, a corresponding decline abroad? A. Not so sudden as that I think.

Q. Had there not been a general decline in those rates? A. Yes; those rates we have now are the actual parity of the rates that existed from Europe by the conference lines with one exception, where they are lower than the conference lines in Europe. There is one article where the rate to-day is——

MR. BALDWIN: What is the article? 5665

THE WITNESS: I think it is tin plate. I think the rate is lower, about 60 cents a ton lower than the conference lines rate in Europe. I presume that can be speedily corrected.

Q. Will you give again the names of these five outside lines operating from Brazil to Europe? A. Antwerp Steam Navigation Company, the Royal Belgium Argentine Company, Roth Brothers, the Horn Line—I think the Horn Continental Line it is known as—then there is a ship broker and ship owner, Mr. Fred Drughorn who operates steamers. I believe he has contracts with certain railways in Brazil to carry such materials as they ship from Europe, and certain classes of materials, just as Mr. Houston has with some of the railroads in Argentina. 5666

Q. Those five lines run as I understand you with comparative regularity? A. They run at intervals. Regularity is not a great feature in the shipment of bulk cargo. You do not make so much of a point on that. A few days or a week does not make so much difference.

Q. They run whenever their contracts are to move a large cargo? A. They enable the shipper to carry out his contracts of shipments with the buyer, which calls for a shipment within a certain period of time. 5667

Q. Have you any idea in a rough way of the number of ships employed by those five lines? A. My understanding is that there is something like 24 ships—upwards of 24.

Q. About how many voyages a year would that give by those outside lines? A. I should think they could make from four to five voyages a year. It depends. I don't know whether all of these steamers go back again or whether—some of these lines charter steamers—I do not suppose any of these lines can fill many of their steamers. 5668

Q. As I understand is it the competition of your selling competitors in Europe, who obtain transportation by means of those outside lines that you have to meet here? A. Largely.

Q. Principally? A. Largely.

Q. And was it to meet that competition, in part at least, that you established your own line? A. Largely.

Q. It was to enable yourselves to have your own vessels to meet that that you have your own line going? A. Yes.

5669 It enables other shippers to ship under the American flag if they wish to ship.

Q. These are all American steamers? A. All American steamers. But it is a question of rate. We have not found anybody yet who would object—if shippers want cut rates usually the flag does not make much difference to them, except when they make a trip to South America and come back and talk about it and bewail the absence of the American flag.

Q. There are no special concessions or advantages in
5670 the nature of subsidy or contract? A. No.

Q. That you get the benefit of by operating American ships in that line rather than English ships? A. No.

Q. Is it because of the nature of the business that the United States Steel Products Company transact—of the extent of that business as I understand it—that you have never made a practice of entering into any exclusive contracts? A. Largely.

Q. Well, now, your products do not stand quite on the same footing as the products that are shipped by the ordinary shipper, do they, in regard to price, standardiza-
5671 tion of price and marketing of the products in their places of destination?

MR. BALDWIN: I object to that as being too general and on the ground that he has not shown any knowledge of whether there was such a standardization, or whether that there was any difference in the prices of other commodities.

MR. KIRLIN: I supposed you had some reason for emphasizing the fact that they did not make
5672 exclusive contracts.

MR. BALDWIN: I submit there is no foundation laid here at all for the question, and also as immaterial, irrelevant and incompetent.

Q. (Question read.) A. I presume there are some commodities that are sold, patented articles that are sold at the same price day in and day out in all these countries.

Q. And food staples and large classes of cargo have a more or less general price in the ports of destination, subject only to ordinary fluctuations, do they not?

MR. BALDWIN: Objection.

A. I suppose they would be subject to fluctuation the same as our products. 5673

Q. Where shippers are shipping articles which are more or less of standard price, do you see any advantage or disadvantage in such shippers desiring to have contracts covering all of their shipments for a period of time? A. Yes.

MR. BALDWIN: I object upon the ground that the question involves a conclusion as to which there has been no data furnished. Where this witness might see a reason and might be able to express a reason it would not be at all expressive of what the opinion or thought of the shipper in that particular commodity may have in mind. The question is purely an illegal and incompetent question. 5674

Q. State what your opinion is about that and the reasons for it? A. With a regular service, calling at a number of ports, it would seem to be advantageous to a small shipper to have such facilities.

Q. In Exhibit 317, Mr. Farrell, you have given a list of the different rates that you paid on shipments to the various ports for a period of five years, and these rates you say have increased in some cases up to as much as 100%? A. Just approximately 100%. 5675

Q. Now, you are a large charterer of steamers and have been during that entire period, have you not? A. Yes.

Q. And have kept informed of the market rate for charters? A. Yes.

Q. And during that period? A. Yes.

Q. And have made many charters yourself during that period? A. A great many. 5676

Q. How has the increase in the freight rates which you have noted in this Exhibit 317 compared with the increase in the market value of carrying tonnage during the same period? A. Pretty much the same, but not quite 100% on our average charters.

Q. Make that a little plainer; do you mean that the increase in the general market has been more or less 100%? A. A little less in our transactions.

Q. And how has it been on the coal basis that you mentioned—that you have given a list of in that other exhibit? A. I should say the coal charters have increased

5677 about 75% or 80%. The charter is made this year at 16 and 3 and 15 and 9 from Cardiff to Rio and I do not recall any charter made under ten shillings a ton from Cardiff to Brazil on coal at any time—9 and 9 is one charter.

Q. Are the rates now as high as they were in 1912—chartering rates? A. No.

Q. They have receded some, have they not? A. Some, but time charter rates have not receded very much, unless you take steamers over a very long period. There is
5678 quite a difference in a steamer for three years, 3 and 6 pence, and two years for 4 shillings, twelve months for 4 and 6. That is about the market on long voyages.

Q. Now, the Steel Products Company is a very large charterer and a very responsible charterer, is it not? A. Well, it is a large charterer.

Q. It is regarded in the market as being a very large and responsible charterer? A. Well, that is a matter of—we haven't any difficulty in doing business and making charters.

Q. I should imagine that, but is it not a fact that there
5679 is a considerable degree of competition for the business that the Steel Corporation has to offer to the market? A. I could not say so. As a matter of fact some owners do not like to carry full cargoes of steel, they would rather carry wheat.

Q. That would be true, of course, if there was wheat offering? A. There is always wheat from the Black Sea, or the Plate, or somewhere, or Australia.

Q. But the Steel Company always gets at least as good as going rates, does it not? A. We try to. I do not know
5680 that we always succeed. I don't want to be irrelevant about the matter, but I do not think we have any special province in that direction.

Q. And judging the market by your own results of charters the appreciation that has taken place in Brazilian rates is approximately the same as that which has taken place in the charter rates during the same period? A. Pretty nearly; a little less than the general cargo.

Recess taken until two o'clock P. M.

AFTERNOON SESSION. 5681

JAMES A. FARRELL, recalled.

CROSS-EXAMINATION continued by Mr. Kirlin:

Q. Mr. Farrell, you have given the rates that have been paid by your companies to the conference lines on the different classes of commodities for a number of years past; were the rates that you paid uniform rates that were paid by all shippers alike of like product? A. To the best of my knowledge and belief they were. I think Mr. Daniels testified, I noticed, on page 577 of the hearing—that he 5682
said that the same rates were made to all shippers on the same class of products.

Q. You have no reason to doubt that? A. The only difference in our case is that we make our bookings direct with the steamship companies and they do not have to pay brokerage on our business. They make less money when they carry our competitors' materials because they pay a brokerage on it to the shipping or freight broker; so they get more out of our business than they do out of our competitors' business. 5683

Q. You have said that the rate for charter from here to Brazil would in your judgment be less if there was return cargo, and yet I understood you to say that if the coffee agreements between the lines and the shippers of coffee should be abrogated it would not make any difference in the charter rates for steamers between here and there; what is the basis of your opinion on that? A. The tonnage of coffee shipped, of course, is very large, but not sufficient to furnish cargoes to all the vessels that would return to New York, and the rates, if they are anywhere near the 5684
rates that Arbuckle is willing to pay, would be very unsatisfactory, if they have any relation to those rates.

Q. You said you thought the rates would not be remunerative on coffee if the coffee cargoes were entirely open to unrestrained competition; what is the basis of that opinion? I understood you to say that if there were no agreements between the coffee shippers—— A. I did not say anything about agreements. I did not mention agreements.

Q. It was in Mr. Baldwin's question? A. I do not recall his question.

Q. Mr. Baldwin asked you if, whatever agreements there were down there between the shippers and the conference

5685 lines were undone and this unrestrained competition followed, whether that would affect the charter rates, and I understood you to say that there would be so much competition for the coffee that the rate on it would not be remunerative; did you express that opinion? A. I would like to have Mr. Baldwin's question read; I do not recall having it put that way.

Q. It is a fact, is it not, that there is not enough coffee coming up to furnish complete cargoes for all the ships that go down from here? A. There is not enough.

5686 Q. And, of course, if charter ships and all the ships were bidding for that coffee and there were no agreements or exclusive shipping contracts the coffee rate would naturally go down, would it not? A. Yes; it would be on the same basis as a man in our business.

Q. What is that? A. That is a highly competitive basis.

Q. And how remunerative is it? A. Most of it is carried at a loss.

Q. You spoke about Arbuckle's rates, and I think you said also that you had some coffee offered to you, but that you found it would not be profitable to carry it; were you re-

5687 ferring to Arbuckle's coffee? A. Yes. I believe that the rate offered was 26 cents a bag, or 26½. I think it was a cent a bag under the rate that the Lloyd Brazileiro charged, 27½ cents. We made a calculation on that and our figures showed that in order to get out whole on that contract we would have to have 37 cents a bag to carry it.

Q. That would not leave you any profit? A. No. On the basis of Arbuckle's, taking 11 cents a bag for loading in Brazil ports and 7½ cents here, that is 4 cents lighterage, and 3½ cents for the stevedoring, our ships being longer

5688 than Arbuckle's wharf—I think it is 300 or 320 feet long and our ships are 400, and we would have to lighter the coffee, so that the net result would be that out of the 26 cent rate, take the 11 cents a bag for loading in Brazil and 7½ cents here, we would get 8½ cents a bag for the ship, or a cent a bag more than it cost to lighter and stevedore the coffee from port of destination to here. It is business that does not attract us.

Q. During the period that you have been shipping merchandise to South America by the conference lines, that is, the period covered by these exhibits that have been put in evidence, have you also been shipping by conference lines in other directions? A. Yes.

Q. What is the fact about it in your experience as to what 5689
extent the long voyage services are operated, whether through the medium of conferences or not? A. Generally through conferences.

Q. From abroad as well as from this country? A. Yes.

Q. Have you any opinion as to whether conferences that exist, such as this Brazil conference, are any advantage or disadvantage to the trade?

MR. BALDWIN: I object to that as incompetent and immaterial.

5690

A. If the rates were reasonable they would be an advantage.

Q. In what way? A. In building up the commerce of the country.

Q. How do they build up, if they do build it up? A. If the rates are reasonable they would enable the manufacturers and shippers of this country to increase their business abroad.

Q. Do you consider agreements for the fixing of rates to be useful to commerce if the rates fixed are reasonable 5691
rates?

MR. BALDWIN: I make the same objection as before, and upon the further ground that it is not pertinent to the direct. I asked no such questions whatever as to the reasonableness or unreasonableness of rates and the advantage of conference, and if you are going to interrogate him upon that line you must make him your own witness.

Q. (Question read.) A. If the rates are reasonable, yes. 5692

Q. In what respect? How has the fixing of reasonable rates a tendency to develop commerce? A. By extending the facilities, calling at a greater range of ports, calling at out of the way places. I think the commerce of Germany—the shipping of Germany and the merchant marine of all European countries has been built up largely because of the existence of conferences. I think the merchant marine of this country could be built up on that basis, perhaps to a much greater extent than it could under any other form of encouragement.

Q. Have conferences in your judgment had a tendency to

5693 promote suitability in facilities offered for transportation and regularity in the despatching of ships?

MR. BALDWIN: Same objection I made before.

A. I think to a greater extent in Europe than in this country, because in Europe the so-called shipping conferences, ship-owners' association and merchants' associations dealing in these various countries cooperate together. There is no such cooperation in this country.

Q. Such cooperation I suppose has a natural tendency
5694 to lead to arrangements which would serve the mutual convenience of both sides? A. Yes; and in the case of European conferences the merchants have as much to say about the rates as the ship-owners; that is, they cooperate with one another, and if rates are too high the pressure which is brought to bear on the conferences is so strong, and the merchants' associations are strong enough to put on lines of steamers themselves, so that as a natural consequence the rates are kept on a reasonable basis.

Q. Are there merchants' associations here? A. Yes.

5695 Q. Similar to the merchants' associations there; are they developed to the same extent? A. They are not developed; very small.

Q. They ought to get together more? A. Well——

Q. Is it a desirable thing judging from your experience to have sailings apportioned and fixed so that duplication will be avoided; that is, so that they all will not sail on the first part of the month, but that the sailings will be distributed, or wont all sail in one month and none perhaps in the next month? In other words, conferences fixing sailings, provided they are fixed reasonably and with
5696 a fair degree of regularity, a desirable thing in your judgment?

MR. BALDWIN: Same objection.

A. If the New York Central railroad was to start all of their eighteen or twenty trains on Monday and not have any more for another week the public would complain about it.

CROSS-EXAMINATION by Mr. Burlingham:

Q. Did I understand you to say that in the matter of the

Steel Company the rates were on a parity here and 5697
in Europe? A. At present; since the 22nd of September.

Q. And taking it for a period of several years how have they been? A. They have generally been higher here. But when——

Q. Substantially or slightly? A. Well, it varies. When the attention of the lines has been called to disparity in rates they have generally made an effort to bring the rates down to a parity with European rates. I do not know that they have always been successful, but they have made an effort to do it. 5698

Q. During the last five or six years what do you say as to the reasonableness of the rates charged by the conference lines on transportation from here to Brazil?

MR. BALDWIN: I object to that as immaterial, irrelevant and incompetent and not pertinent to any question asked upon direct, and the question does not involve sufficient statistics for this witness or any other witness to express an opinion as to whether reasonable or unreasonable. The various elements that enter into the question of the reason- 5699
ableness of the rates are absolutely absent from this record.

Q. Answer it? A. I am not sufficiently informed, or not in an intelligent position to answer the question.

Q. My question was directed entirely, Mr. Farrell, to the products that you export? A. Will you have the question read again?

Q. I will repeat it. What do you say to the reasonableness of the rates of the conference lines for the transporta- 5700
tion of products of the United States Steel Company from the United States to Brazil during the last four or five years?

MR. BALDWIN: Same objection.

A. They have not been sufficiently reasonable to enable us to develop our business on the scale that it is necessary for us to develop it.

Q. You recognize, of course, that during that time there has been an enormous increase in operating rates throughout the world? A. Yes.

5701 Q. And in freight rates throughout the world? A. Yes. I am not complaining about an increase in rates, but I think an unreasonable increase in rates is subject to criticism.

Q. And do you think there has been any greater increase here than there has been in other parts of the world in the last four or five years?

MR. BALDWIN: Same objection.

A. Not in the long run, because it takes them longer to
5702 get down to parity with the rates here. I think the rates in Europe were lower in many instances before the agents of the lines here are aware of them. I think frequently we know nothing about these changes in a general way until shippers call attention to them and then they make an effort to lower the rates.

Q. With your remarkable facilities, with your offices in large European ports and cities you keep well acquainted with the rates at all times by cable? A. Yes; we are chartering vessels all the time and we have a staff of people
5703 who keep us informed in respect to the freight rates on our commodities from all of the producing countries in Europe from England to Russia.

Q. Is it the general matter of rates that have prevented such a development of your business as you would desire throughout the world? A. Not altogether. Facilities have played a considerable part.

Q. And they are improving steadily, are they not? A. Improving.

Q. And you have no complaint as to the reasonableness of the rates now? A. Not at present.

5704 Q. And have not had since—— A. The 22nd of September.

Q. What was the reason for establishing this line of yours?

MR. BALDWIN: I object to that as immaterial.

Q. If you do not mind saying? A. I have testified on direct examination concerning that.

Q. And do you carry general cargo, or intend to? A. We do.

Q. Some of these boats are from the American-Hawai-

ian? A. They are. They are chartered, and then we own 5705
boats. We have some boats that we will probably put under the American flag, recently built abroad.

Q. Under a foreign flag do you mean? A. They are under a foreign flag at present; some building and some sold to us.

Q. You do not intend to confine yourselves to American flag boats? A. Well, we are operating all over the world, and we will probably confine ourselves to the American flag in the Brazil trade.

Q. And as I understand it you have not gotten around to 5706
establishing a line from the Gulf yet, but there is a possibility of it at any time? A. We are considering that.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Farrell, the increase in facilities that you say that you have noticed, do you mean to apply those increased facilities simply to these conference lines, or generally? A. I have reference largely to the Lloyd Brazileiro and the operation of Hagar & Company and our own operation, in full cargoes and otherwise. 5707

Q. Now coming generally to the question of the advantages of conference, as I understand it from your testimony, the conference which we call the European conference had in at least five instances regular competition? A. Yes; in the Brazil trade.

Q. Now, there is also on the Continent of Europe a very strong merchants' association, so that if the merchants availing themselves of the conference lines, or any of the other five lines were satisfied that the average rate was one that they would not pay, they would probably be in a po- 5708
sition or to be strong enough to charter boats to supply their own demands, is that right? A. That was the case, and it has been done.

Q. So that there are two elements in the foreign trade that do not obtain in the American trade; namely, a regular line of competition to the Brazilian ports outside of the conference, and these strong merchants' associations who are strong enough that if they are not satisfied with the rates to satisfy their own requirements, that would affect, would it not, the situation there with respect to rates to Brazil? A. That is two questions you have put to me.

Q. I put them both together. They would, wouldn't they?

5709 A. Well, in the case of the conference lines from here. They have similar competition to the lines—the conference lines—in Europe. They have this competition existing here.

Q. The evidence in this case, Mr. Farrell, is to the effect that all the rates, practically with few exceptions, for all the commodities from American ports to Brazil are fixed by the European conference; that is to say, the European conference establishes a rate known as the European rate, and that rate ultimately is established as the rate on like commodities from the American ports to Brazil.

5710 MR. KIRLIN: You ought to limit that to knowledge to make it competent testimony.

MR. BALDWIN: That is near enough.

Q. What competition would the conference lines have, say from New York to Brazil, with any conference line abroad for American products? A. Well, the conference operating steamers from Europe of course operate steamers from Europe; the conference in New York operates steamers from here. In both cases they are ship-owners and it is 5711 quite natural that the ship-owners should fix, or, rather, indicate or establish the rate of freight to be ample in loading his vessels.

Q. Perhaps I did not understand your answer a moment ago that the conference line boats have competition. You do not mean to say that they have competition from American ports by regular lines the same as the European conference boats have from European ports by the regular lines? A. Pretty nearly the same. The only difference is there are more of them in Europe.

Q. To the Brazilian ports what regular lines are there 5712 operating from any American port? A. Lloyd Brazileiro.

Q. That is the only one? A. There is a steamer sent out occasionally. A steamer sailed the other day, the *Hermiston*, I think.

Q. I am speaking of regular lines? A. The Lloyd Brazileiro is a very regular line.

Q. That is the only one, isn't it? A. I should say their competition is or ought to be of sufficient importance to keep the rates of the conference on a reasonable basis.

Q. You think then that the competition of the Lloyd Brazileiro ought to affect the rates from here to Brazil? A. I think it not only ought to do it, but think it does do it.

Q. Does that apply to all commodities or simply to bulk cargo? A. I am not sufficiently informed with respect to other commodities to venture an opinion. 5713

Q. The evidence in this case out the mouths of witnesses connected with these conference lines is to the effect that their rates are not fixed or have any relation to the rates quoted by the Lloyd Brazileiro; would you still think the Lloyd Brazileiro competition would affect their rates? A. I think it has an important influence on their rates.

Q. Even though their own employes testify they fix the rates without reference to the Lloyd Brazileiro? A. It would not necessarily follow that that would be the result. 5714

Q. I am not asking you what might follow. You say you think that the Lloyd Brazileiro competition affects their rates; now I am calling your attention to a situation, a concrete situation as developed by the record, that witnesses who are connected with the conference lines who have been on the stand here have testified the rates were fixed abroad by the European confernces and they do not fix their rates with reference to the rates quoted by the Lloyd Brazileiro. Now, assuming that to be the fact would you still think that these conference rates to Brazil are in any wise influenced by the Lloyd Brazileiro? A. I think so. 5715

Q. In spite of that? A. I think probably they were expressing an opinion and probably their principals were in a more intelligent position.

Q. Then, if that is true, the rates of the Lloyd Brazileiro and the conference lines ought to be on a parity, oughtn't they? A. At the present time the conference line rates are below the Lloyd Brazileiro.

Q. That is only since you started your new line? A. Since we started the United States & Brazil Steamship Line. 5716

Q. But before that time they were not on a parity? A. No; the Lloyd Brazileiro rates were lower.

Q. Now, whether or not the conference is of any advantage to shippers or to anybody else, as I understand your testimony would depend upon the reasonableness of the rates, would it not? A. Largely.

Q. At least a conference that fixes rates? A. Or establishes.

Q. Well now, is it not a fact that in order to ascertain the reasonableness of rates charged that the rate ought to have some relation to the cost of doing business and a reasonable profit? A. You mean the cost of operating ships?

5717 Q. Yes? A. Having regard to the depreciation and other important elements that enter into it.

Q. Take all of that as an overhead charge, if you will; the cost of doing business would necessarily connote the depreciation you would have to charge off, wouldn't it? Isn't that always so? A. Well, in a varying degree.

Q. Well, whether in a greater or less degree, however, the expert might look at it, what they charge off, the rate ought to have some relation to the cost of doing business, oughtn't it? That is to say, if you carry a general cargo
5718 from New York to Brazilian ports the charge ought to have some relation to the cost of carrying it, oughtn't it, and embrace in the cost of carrying all of the possible expenses? A. Not necessarily. Because opportunity might offer to an owner to engage his ship in some more lucrative trade, as is often the case.

Q. Would that apply to a general line that holds itself out to the public to have regular boats? A. It should not.

Q. Then as far as a regular line is concerned that holds itself out to carry cargo generally for the benefit of the whole public from New York to Brazil, if entering in con-
5719 ference with others to fix the rate, the rate ought to have some relation to the cost of doing business, oughtn't it, also having in view a reasonable profit? A. I presume it does.

Q. It ought to, ought it not?

MR. BURLINGHAM: Morally?

MR. BALDWIN: Yes. We are going into economics now.

Q. Isn't that right? A. I answered that. I presume it
5720 does.

Q. You say you presume it does, that may be what actually happened; I am asking you, whether it should not? A. It would depend a good deal on the individual I think.

Q. Is it an advantage to the consumer to have foreign corporations operating in American territory fix the rates abroad to apply to the carrying operations from American ports to Brazil an advantage unless the reasonableness of the rate is involved. A. That is a very large question. The American products are sold to foreigners.

Q. I mean to be shipped from here, and I have more in mind, the Brazilian business? A. Well, if we were to sell

materials to Brazil or to any other country we would sell them probably in the currency of the country we were doing business in, and if the receiver of our goods had any preference to have his goods shipped under his own flag, the Dutch flag, the Brazilian flag, or whether the French flag, we would ship them in the cheapest bottom. That is a matter of competition. 5721

Q. I don't think you quite understood my question, or I have not made myself plain. Mr. Kirlin has asked you certain questions with reference to the advantages that arise out of conference. Now, I am asking you the question whether it would be an advantageous thing for the American shipper, generally speaking, to have rates fixed abroad by the conference there made operative here unless those rates were based upon the reasonable cost of doing the business in some degree at least? A. That would be one of the elements, but another one would be that an American shipper, and we class ourselves among American shippers, we have no objection if the rates in this country were no higher than the rates on similar commodities from European ports. Then, of course, the rates would have to be reasonable. The rates should not be fixed on a basis, or established on a basis, that would restrict trade or curtail buying. Not necessarily restrict trade, but curtail buying; but if the rates from here and the rates from abroad were on a parity and conferences had a frequent number of sailings and were offering sufficient facilities to ship they are an advantage to the shipper, to the general shipper. 5722 5723

Q. But would it be an advantage to the general shipper if the rates were arranged arbitrarily abroad and having no relation to the reasonable cost of doing the business? 5724

MR. BURLINGHAM: We object to that. There has been no foundation for it.

A. I do not know that they are fixed arbitrarily.

Q. That is not the question, Mr. Farrell. The question is whether or not—(Question read) from here or from New York to the Brazilian ports? A. I cannot make any more definite answer to that question than I have already done.

Q. Well, the evidence in this case, Mr. Farrell, is that the conference lines' boats, particularly the Prince Line

5725 and the Lamport & Holt and some at least of the boats of the Hamburg-American Line are engaged almost exclusively in the trade between here and the Brazilian ports or South American ports, some of them Brazilian ports——

MR. KIRLIN: That is not true of the Prince Line.

MR. BALDWIN: I will withdraw the question.

Q. You recognize the fact that these conference lines are first called regular lines, don't you? A. So-called.

Q. And that they maintain a regular schedule of sailings
5726 and so many boats a month and all that, you understand that, don't you? A. Yes.

Q. Well now, for the purpose of arriving at the reasonableness of the rates that are fixed abroad for that, that is, a rate from the European ports to Brazil to be a rate from New York, we will say, to Brazil, that that rate ought to be based upon the cost of doing business and a fair profit, oughn't it? A. That ought to be the case in all businesses, but it is not the case.

Q. I say it ought to be, ought it not, in this particular
5727 trade? A. That would be the ideal condition in our businesses.

Q. You said a moment ago that a merchant association abroad was in a position to check rates, that is, if they are unreasonable? A. Yes.

Q. Is there any association in this country strong enough to do that that you know of? A. There are associations here at the present time which are making a study of those questions.

Q. That is not the answer. Have there been up to the present time any association? A. Not to my knowledge.

5728 Q. When you spoke about the coffee you were offered at 26 cents, was it a bag? A. Either 26 or 26½.

Q. Were you referring to Arbuckle's coffee? A. Yes, Arbuckle's coffee.

Q. You figured out then that that rate which they wanted you to carry it for was one which you could not adopt with any profit to yourselves? A. It would be cheaper for us to come back in ballast. Of course, there would be a loss on a ballast ship back but it would be less expensive coming home.

Q. The price you figured, 37 cents, that you could carry it for, what did that embrace? A. It embraced the cost

of loading at the Brazilian ports 11 cents a bag, the cost 5729
of discharging here, 7½ cents a bag; we added a ½ cent a bag for general expenses and the balance to the ship, which would leave a slight profit.

Q. At that rate you would have been willing to have done their business? A. Yes; we would have carried it at 37 cents.

Q. Now, with reference to this manganese ore which you say is carried at a loss, what is the situation about that, or isn't there anything peculiar about it? A. The manganese ore business has been a very peculiar business. 5730
The miners of Manganese ore sell their ore through brokers.

Q. Where is it mined? A. Mined in Minas Geraes in Brazil.

Q. Are you large consumers of manganese ore? A. We are the only consumers at the present time in this country, due to the fact that only 20 pounds of ferro manganese go into a ton of steel and it has not been found an economical thing for the small steel plants to put a blast furnace on to the ferro manganese producing 412 tons of manganese a day as against perhaps 3,000 tons of steel a day, 5731
which would require only about 4 tons.

Q. Therefore, you are one of the companies that operates in such volume that you can use it? A. The other companies instead of importing their manganese ore import the ferro manganese itself. That is, the pig metal. There isn't any particular economy in producing ferro manganese from ore excepting to have sufficient supplies to take care of large operations. Heretofore this ore has been sold through brokers. A broker in Rio passes it through a broker in London and the London broker passes it 5732
through another broker in Philadelphia or in New York and by the time the c. i. f. price is made up it includes several commissions, and in the case of shipping the ore on a c. i. f. sale the freight rate or, rather, the ship owner, would be obliged to pay several commissions—pickings I call it—which amount to nearly four shillings and six pence a ton on a fifteen shilling rate. For the manganese ore the ship owner would get ten shillings, three pence a day out of the rate. In our case we buy the ore from the mines and get the fifteen shillings for carrying it. That is, the ship gets the fifteen shillings.

5733 Q. And the pickings aren't there? A. No. All of our operations stand on their own bottom, the manufacturing, shipping and everything of that kind.

Q. Then the manganese ore trade as it was before you bought your ore at the mine because of these pickings of which you have spoken, or commissions, or whatever you see fit to call them, and the ultimate return to the ship-owner made that an unprofitable cargo? A. Yes; for example, in a charter he would be given 250 tons a day loading and then would enter into an agreement with the
5734 charter party to pay despatch money for all excess loading. The shipper of the ore might load a thousand tons a day and the ship might be paying 80 or 90 pounds a day despatch money. It is a vicissitude.

Q. So that it was not a profitable return cargo for any charter steamers that you had up to the time that you bought directly from the mine? A. No. We have chartered some of our own steamers; that is, steamers that we own, to carry back manganese ore. We have sent steamers to Brazil.

5735 Q. Under charters to other people? A. Yes, and we have sent our own steamers there to take it.

Q. Would there be any advantage in bringing back manganese ore as against coming back in ballast? A. Well, on the present basis we see a profit in it and we figure liberally. There is profit in carrying our own manganese ore. We have return cargo for our vessels.

MR. KIELIN: Of ore?

THE WITNESS: Of manganese ore.

5736 Q. Is that volume large enough to supply all of your vessels on the return voyage? A. Yes, once a month.

Q. Coming back to this question of coffee, if you could make contracts for the carrying of coffee from Brazil to New York, we will say, or New Orleans, on the basis of 37c per bag for we will say your chartered vessels, vessels which you chartered, would that affect in any way the charter rate that you would be compelled to pay for the chartered vessels? A. No.

Q. Then the mere fact that you could get a cargo of coffee back in a vessel that you charter would not affect the charter rate? A. No.

Q. Why is that? A. The charterer, the ship owner, does

not specify, excepting in very rare cases—he does not 5737
specify the character of the cargo that the charterer is going to use the ship for unless it is dynamite or gasolene or something of that kind, some explosive or hazardous cargo.

Q. What I had in mind was this; if there were no return cargo of coffee and you did go into the market and charter a vessel from here to Brazil and the owner of the vessel knowing that you would have no return cargo but would have to go elsewhere for cargo, either return or go to some other port, would not his charter price to you 5738
embrace that situation? A. Yes, it does.

Q. Then in that sense at least the charter price is enhanced because of no return cargo? A. That is true, but as I said this morning, a great many commodities exported from Brazil to Europe do not come here at all, such as bran and cotton. I have all of those statistics.

Q. If you go into the open market to charter a vessel and you had nothing to offer whatsoever in the way of return cargo, the charterer, his rate outward, would be higher than if you could offer him a return cargo? A. If it was 5739
simply for an outward voyage. In our case we charter them on time over a long period and that element does not enter into the charterer's calculation of our case.

Q. Take the case of a trip charterer, that would enter? A. It would in a trip charter, but not a voyage.

Q. On a time charter? A. Yes.

Q. Your first steamer that went out of here on September 10th, it did contain general cargo? A. No, entirely a full cargo of steel products.

Q. But you had a steamer subsequent to that time that did? A. One yesterday, the *American* sailed yesterday. 5740

Q. Was that general cargo entirely? A. About 1,000 tons of general cargo and the balance was our products. As much general cargo as we could give the steamer, because our contract necessitates that steel; our contract with the railroad called for certain tonnage to be delivered within certain periods.

Q. These boats that you have chartered from time to time, they always go out in full cargo, don't they? A. Always in our case. We do not pay for any room without using it.

Q. Do you ship a general cargo in small parcels to Bra-

5741 zilian ports? A. Yes; we take anything from a clock to a derrick.

Q. With reference to the Steel Products Corporation, do you ship small lots of any of your products? A. Yes; we sell anything from 100 pounds or a keg of nails up to 100,000 tons of material.

Q. Then your business necessitates the facilities to not only carry your bulk cargo but also to carry these small lots? A. It does, always.

Q. And it is for your interest to have opportunities free
5742 and unrestricted to send those small lot cargoes by any and all lines? A. It is to our interest to have opportunities.

Q. I asked you a moment ago whether you shipped full cargoes by chartered steamers; you only charter for that purpose, don't you? A. Yes.

Q. You testified on your direct examination that the conference lines called at New Orleans and took your commodities from there to New York? A. Yes.

Q. Now, do you know what the difference in mileage was or is? A. It is 1,700 miles from New Orleans to New
5743 York.

Q. How much would it be by the direct route? A. It is about 5,250 from New Orleans to Rio and about 4,778 from New York, I think.

Q. Do these vessels that go up from New Orleans have any other commodities than yours? A. I don't know.

Q. Do you know what the relative cost per mile for steaming would be to those vessels from New Orleans up to Brazil? A. No, I do not. I could tell in the case of our own vessels, but not others.

5744 Q. It would depend a great deal on the size and character of the vessel? A. Yes. Some steamers burn 25 or 26 tons of coal a day and others burn 40. The average coal consumption of a 6,000 or 7,000 ton cargo steamer is about 30 to 35 tons a day, depending on their power.

Q. Are you able to state about how far the capacity of these boats is taken by the shipments that go from New Orleans to New York? A. A very small proportion.

Q. About what? A. I think the largest shipment we had was about 7,000 tons. It is a business we are building up. Never having had the opportunity to export pig iron from Tennessee to Brazil before we have to build the business

up. It probably will develop into a very large business. 5745

Q. The lack of opportunity was due to what? A. The lack of shipping facilities.

Q. You mean on the Gulf ports? A. Yes.

Q. Your vessels you say that stop for your shipments at Savannah, they do not go out of their way materially, do they, to make that stop? A. No.

Q. It is practically on a direct line, isn't it? A. We sailed a steamer to-day for Vancouver, which calls at Savannah for 2,000 tons of rails for Prince Rupert. It is not a great diversion. 5746

Q. Have you been in position to notice whether or not that the rates quoted by these independent lines abroad to the Brazilian ports are on a parity with the conference, European conference lines? A. They are usually lower. The ships are taken usually on the Cardiff basis. There is always an opportunity for case oil or whatever the commodity may be, and it is recognized as differentials which are justifiable.

Q. But it is less than the conference rates somewhat? A. In the case of full cargoes, yes. That is not the case to-day so much as it has been in the past. 5747

Q. When did that change take place? A. On this last reduction.

Q. You mean since this new line of yours was started? A. That may be a coincidence you understand.

Q. But it is at least that? A. Well, it is more apparent than real.

Q. You said in answer to one of Mr. Kirlin's questions that you had established this line to meet this foreign competition? A. We established the line to enable us to maintain our position in securing large railway contracts, contracts for railway material, and in the transportation of other products in large volumes. I have in mind an instance where we had 56,000 coils of wire to deliver to one consignee within a certain month. We put that cargo in one of our ships going to Buenos Aires and she called at Rio and delivered 3,500 tons, which would have been too much for a conference line's berth steamer to carry. That is one steamer to have carried at any particular time unless they shut out and put other people to a disadvantage, other shippers. 5748

Q. Assuming that the conference lines' boat or confer-

5749 ence lines had more than one boat available in a port at the time you wanted to make a shipment they could take it on some other boat that was in ballast, couldn't they? A. Well, that I don't know whether they could or not. They could have chartered a boat for us perhaps.

Q. Assuming that there were other boats on the berth? A. If they had three boats in port and those three boats were going to sail on the same day they could have taken care of that weight of cargo.

Q. They would not necessarily have to sail on the same
5750 day, would they? A. In this case they would have had to sail pretty close together in order to enable us to make the contract delivery.

Q. Is that what you meant when you said that you had established this line to secure yourselves? A. No, I have not said so. We established the line for the purpose of extending our facilities and enabling us to take care of the volume of business which naturally comes to us as large producers in competition with producers of Europe, steel producers.

Q. Haven't the conference lines sufficient facilities to,
5751 or haven't they had sufficient facilities, to supply your demands? A. Not in carrying large contracts.

Q. You think that the regularity of sailings is a benefit to the small shipper? A. Yes.

Q. Are you familiar at all with this what we call here this competitive era in 1907, when there was no conference between these lines while they were all in competition? A. Generally, yes.

Q. Is it a fact that there were just as many boats and just as regular sailings during that time as there were
5752 before? A. I don't think there were so many, not so many.

Q. Are you just speaking from a general recollection or—— A. General recollection. Of course, my remembrance generally covers a pretty fair period of time but I do not——

Q. Do you know whether or not that there was any time after 1908 to the time the present conferences were entered into when there were less steamers of these conference lines on the berth than during this competitive period? A. My recollection is there were a greater number of steamers.

Q. The evidence in this case according to Exhibit 212

shows that in 1907 there were fourteen sailings of one line, fourteen of the Prince Line? A. To Brazil? 5753

Q. Yes; while in 1908 there were eighteen and in 1909 only twelve? A. How many in 1910?

Q. And there were more again in 1910 and from 1910 down to and including 1912 the evidence is to the effect that business had increased all over the world? A. Yes, there was a period of depression in 1907 and 1908 that we have a very vivid recollection about.

Q. But in 1907 the Prince Line boats actually had more boats on the berth than they had in 1908. Now, the Lamport & Holt Line had in 1906 sixteen boats, in 1907 fifteen boats, in 1908 it had twenty-two and in 1909 again twenty-one. Now, in 1906 the Hamburg-American Line seventeen and in 1907 eighteen; in 1908 it had eighteen, in 1909 it had only thirteen. There were sufficient steamers on the berth in 1907 to take care of all the trade that was offered, weren't there? A. Yes, but it was rather limited in 1907. 5754

Q. And after 1908 trade picked up pretty generally, didn't it, all over the world? A. It increased, yes.

Q. And then the number of sailings of all the lines was increased? A. Yes. 5755

Q. Well, isn't it a fact that the number of boats that are offered have some relation to the volume of business that is offered? A. Naturally.

Q. Now, it is of no advantage whatsoever to a shipper in having where there is a surplus of tonnage and a lack of commodities to have more than one boat on the berth at the same time, is it, of these conference lines? A. Well, if that boat is going to make all the ports of call in Brazil and there is sufficient space in the boat to take care of the shippers' requirements why she will be sufficient. 5756 These boats alternante between ports; they do not all go to the same port.

Q. But the evidence in this case is very frequently in Brazil, at Rio, there has been more than one boat either in the first or last half of the month of these conference lines scheduled for American ports, New York particularly. Well now, the fact that there is not enough coffee to go around, assuming that there is not enough coffee to go around, it will be of no advantage to the shipper—the coffee shipper—to have more than one boat there of the conference lines, is there, at the same time? A. Well, I

5757 think the coffee shippers use the steamers as a warehouse down there.

Q. I am speaking about the advantage now to the shipper; is it any advantage to him to have more than one boat? A. Well, It would depend upon his point of view. I cannot answer that question.

Q. You have already testified as to the possible point of view of the small shipper with reference to the desirability of regular sailings and all that, and I am now asking you another phase of it; generally speaking if there
5758 is more tonnage than is necessary for the amount of products available for shipping there is no advantage to the shipper to have more than one boat on the berth at the time, is there? A. There might be.

Q. There might not too, I suppose? A. Depending on the speed of the boat you know. Sometimes a man might want cargo to reach destination earlier perhaps than another parcel. They may be split up into different parcels.

Q. Suppose the boats that are on the berth are practically the same speed capacity and going to the same
5759 ports, then would there be any advantage? A. I want to answer your question, but I cannot put myself in the place of the man in Rio who is in the coffee business.

Q. I will have it relate to the situation here in New York? A. Your question is—will you read the question again?

(Stenographer reads: "Q. You have already testified as to the possible point of view of the small shipper with reference to the desirability of regular sailings and all that, and I am now asking you another phase of it; generally speaking, if there is
5760 more tonnage than is necessary for the amount of products available for shipping there is no advantage to the shipper to have more than one boat on the berth at the time, is there?")

Q. I will put it again, if you wish me to? A. No, I don't think it is necessary, Mr. Baldwin. I should think there would be an advantage to the shipper to have more than one vessel either in New York or in Rio to put his goods in. The question of insurance and risk and all that sort of thing. We frequently sell a very large quantity of material and put it into different vessels. As a matter of

fact, we are very large consumers of pig tin, the largest 5761
in the world probably. We import pig tin from Penang and Singapore, but we put that material in as many vessels as we can get to ship it in because of the value of the product and desirability of having it arrive at different times or over various periods.

Q. My question had more to do, or directly to do, with the small shipper? A. Well, there are small shipments of pig tin. There are not more than two or three hundred tons in a ship. We might buy a thousand tons of pig tin and put it in five vessels.

Q. Coming back again to the situation here in New York, 5762
if there is any advantage in having more than one vessel upon the berth here in New York that advantage would be just precisely the same for a vessel of a competitor as it would be for the vessels of the conference lines, wouldn't it? A. Yes.

Q. So that there is nothing particularly peculiar to the conference in that, is there? A. Oh, no.

Q. Is it not a fact that during this competitive area in 1907 that there were ample vessels here on the berth to take charge of all the business that was offered? A. I 5763
believe we sent vessels to Brazil in that year, chartered vessels, in addition——

Q. That is not responsive. A. Well no, it is not responsive. I don't think there were sufficient number of vessels as far as cargo was concerned.

Q. Generally speaking, do you know whether there was for the general shipper? A. It would be an assumption. A pure assumption. I assume that there were.

Q. You don't know anything about it then? A. No; I assume that there were. 5764

Q. Do you know whether or not that the sailings were regular by these lines in 1907? A. To the best of my recollection, they were.

Q. Now, you say that you shipped accessories that go with rails; what weight of accessories go to a ton of rails? A. About 300 pounds; fish plates, bolts and spikes, bolts and nuts.

Q. Is the extra rate paid on accessories from the Pittsburg district to a Gulf port a very important factor in figuring the rail rate paid on the entire shipment? A. Not an important factor. It is a little higher but not materially.

5765 Q. How much higher would you say it was? A. I think 80c or 90c a ton. The accessories are more valuable, a more higher priced product—more from Pittsburg to the Gulf ports. It is necessary to ship accessories with the rails otherwise the accessories pay a higher rate of duty if they do not accompany the rails; they must go together. That is particularly to Brazil.

Q. You mean by the Brazilian Government? A. Yes. If we were to ship a lot of rails from New York here and the conference lines or the Lloyd Brazileiro or any other line
5766 would set by the accessories we would have to pay a higher duty on the accessories when they arrived at the destination—if they did not get here in time to go with the rails.

RE-DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Farrell, you suggested that a result of conference among lines might be to increase the number of outports served, did I understand you correctly? A. Yes.

Q. You were not basing that upon a comparison of the number of outports served in Brazil during any competi-
5767 tive period and during a period under which the conference dominated the situation? A. No.

Q. Isn't it true sometimes in your experience, Mr. Farrell, that the conference areas controlled by the conference are not served as to outports as completely as the trade requirements might seem to demand? A. In the conduct of our business we have not encountered any such condition.

Q. To refresh your recollection on that, to show you just what I mean, do you recall the start of the Manchurian Line, the American-Manchurian Line to Asia? A.
5768 Yes.

Q. Now, how did that come about? A. It came about because the regular lines wanted to charge us an arbitrary over the Yokohama rate to Dalny, 20 shillings a ton.

Q. And Dalny being an outport in the Far East? A. It was an outport, but a better port than Yokohama from the standpoint of depth of water and so forth.

Q. And I take it from your answer it was a port that that conference was not serving at that time regularly? A. Up to that there had not been any particular business to send vessels from this country to that port.

Q. Then what I take your answer to mean that when

business did demand vessels to go to Dalny that a very 5769
high rate was named by the conference lines? A. Well, they asked a rate which they probably thought they could get, but we didn't consider it was worth twenty shillings a ton over the Yokohama rate, so we established a line of steamers to carry this 150,000 tons of material.

Q. And is that what practically resulted in the American-Manchurian Line being established? A. Yes.

Q. As an independent line? A. As a line.

Q. So that that filled the need or gave a service to an outport that the conference failed to give? A. Well, they 5770
all go there now.

Q. Since that incident? A. Well, if cargo offered.

Q. Now, in this traffic so far as you know there has been no increase in the number of outports served in the Brazil trade? A. Well, some of the extremists have gone to places like Natal and other places, and Maranham.

Q. Is it a fact that they went there during the period of 1907 when there was no conference? A. Not regularly.

Q. Would you call that service to Natal a very frequent or very regular service at the present time? A. 5771
Irregular.

Q. It is irregular? A. Depending on the cargo. We once had 36,000 tons of material to go there and I think in 1909. We have not had any cargo for there at all since that I can recall.

Q. Now, isn't it a fact, that the Lloyd Brazileiro, which is an independent line, serves a large number of those ports? A. They operate a coastwise business.

Q. And they give a more regular service than the conference lines to the small ports, don't they? A. I don't know that they give any more regular service from New 5772
York, but they have another line that takes up the freight in Brazil.

Q. And so far as you know they are not in conference with anybody, are they, Mr. Farrell, the Lloyd Brazileiro? A. I don't know whether they are or not.

Q. By the way, is your line in conference with anybody? A. No.

Q. After the—had the shippers complained any of the fact that you were not in conference? A. Most of the shippers are engaged in trying to get us to cut the foreign shipowners freight rate.

5773 Q. Mr. Farrell, there has been some testimony in this record to the effect that the conference lines were influenced or controlled very largely by tramp competition, either actual or potential, in their fixing of the rates. Now, is it not a fact, Mr. Farrell, that a conference line steamer running as these steamers are with a good will, a regularly established business, loading all sorts of cargo, dead weight cargo and measurement cargo in the same steamer, has a very large advantage over a tramp? A. Certainly.

Q. And that a tramp offering with no prospect of return
5774 cargo would have to charge a larger sum for such an article as steel products than a line with this good will, with this prospect of return cargo, and with its ability to load the steel in connection with measurement cargo, isn't that true? A. I think the question was a little involved.

(Question read as follows: "And that a tramp offering would with no prospect of return cargo would have to charge a larger sum for such an article as steel products than a line with this good will, with this prospect of return cargo, and with
5775 its ability to load the steel in connection with measurement cargo, isn't that true?")

Q. Is that clear now? A. No, it is not clear to me.

Q. What I mean is this: I will separate the question. Isn't it a fact—I think you have testified perhaps that there being a lack of return cargo for the tramp would compel him to get a higher price for going to Brazil than he would if there were return cargo; that is true, isn't it? A. I don't know that I testified to that.

5776 Q. That would be the fact, wouldn't it? A. Not necessarily, no. If a regular line steamer was going to load on the berth, was going to take the full cargo of steel, they would probably expect a higher rate than a tramp steamer. On the other hand, a berth steamer would probably carry steel in small quantity at a lower rate than a full cargo steamer.

MR. KIELIN: Because it would fit in with the other cargo?

THE WITNESS: Yes.

Q. My question was related to what the respective

parties could afford to do, what the cost of doing the 5777
business is. Now, in the first place, take the question of the lack of return cargo; now, I say isn't it a fact that a steamer having a return cargo can profitably carry goods to Brazil at a lower rate than a steamer not having a return cargo? A. I would answer your question by saying if the steamer has a remunerative return cargo that would be the case.

Q. Now, isn't it also true that a steamer having a regular business and ability to carry in the same steamer a large quantity of measurement stuff and a certain quan- 5778
tity of dead weight stuff, can load this steamer more profitably than the tramp carrying the full cargo of dead weight material like steel or cement, isn't that true? A. Yes, that is true.

Q. Then, isn't it a fact, that over and beyond the price at which a tramp can afford to profitably carry this cargo there is not only a reasonable profit to the conference lines regularly engaged in this business, but a large amount above that? A. It would all depend on the freight list. I have never seen two freight lists alike. They vary.

Q. I am speaking about the general situation? A. Well, 5779
that is largely; I won't say clearly, but this shipping business is a practical business in a way. That is, you might send a steamer down to Buenos Aires with a freight list of $65,000 and you might load the next steamer and send her on with $42,000; the business is an average business.

Q. It is an average situation that I had in mind? A. It is an average business with a regular line and a pretty stable business with a tramp, because he always knows what he is going to get when he makes a charter, but when a ship comes on the berth they don't know what the 5780
freight list is going to be until she is loaded.

Q. Well, is it practicable for a charterer to fill up his ship with general cargo with the same facilities that the line can fill its ships? A. He generally has to cut the rate to get the cargo.

Q. Has to cut the rate to get any general cargo? A. Yes, because he hasn't an established position.

Q. You testified about the question of cost at the various points, New Orleans, New York and Pensacola, I think—or Mobile? A. Both I guess.

Q. That I suppose Mr. Kirlin asked as bearing upon

5781 the question of the voyage from New Orleans to Brazil. Now, as a matter of fact, how do the charges compare, the charges actually made by the lines operating from New Orleans to Brazil; how do their charges compare with the charges they make from New York on pig iron at the present time? A. At the present time the rate is the same from New Orleans via New York to Brazil as the schedule rate from New York to Brazil.

Q. How long has that been true? A. Since the 22nd of September.

5782 Q. But, as I understand it now, Mr. Farrell, there is more direct service from New Orleans to Brazil—you ship to the River Plate from New Orleans some, don't you? A. Yes, and also from Mobile.

Q. Can you tell me how the rates from Mobile and New Orleans to the River Plate compare with the rates from New York to the River Plate? A. On our products they are the same.

Q. So that this question of cost if it does make a difference is absorbed by the lines running to the Plate? A. Apparently.

5783 Q. By the way, Mr. Farrell, these boats running from New Orleans to the Plate, do you know of any reason why they could not stop at Brazil as readily as the steamers running from New York to the Plate? A. Shippers would complain about it.

Q. At the Plate? A. No, the shippers from this country. For instance, if you are going to have an Argentine service, a service to Buenos Aires and return, the shipper bases his calculations on the despatch from New York or New Orleans to those points. The question of insurance

5784 comes in; if there is a diversion he has to pay a higher rate of insurance.

Q. That is because they are stopped? A. Because they are coming into another place.

Q. Wouldn't that be also true of boats going from New York to the Plate and stopping at Brazil? A. Yes. I believe in our case we had to pay additional insurance for coming in there.

Q. So that there is no reason obtaining in the traffic from New Orleans to the Plate that would not obtain in the service from New York to the Plate? A. If we found the shippers complaining about it. We sent a ship to the

River Plate that called at Havana, Cuba, and we had all 5785
sorts of claims, extra insurance and complaints about delaying cargo and so forth.

Q. Why would that be so, Mr. Farrell, any more than it would in the New York Service. Is there any reason for it, why the shipper should complain any more in one than they should in the other? A. There is a delay in the transportation of his goods.

Q. Wouldn't it be so just the same from New York? A. New York to Rio?

Q. From New York; would not the ship going from New 5786
York to the Plate putting in at Rio present exactly the same situation as a ship going from New Orleans to the Plate and putting in at Rio? A. I will answer the question this way: a shipper with two opportunities, one direct from New Orleans to Buenos Aires and another opportunity via Rio, Santos, Montevideo and Buenos Aires would put his goods in the direct Buenos Aires ship.

Q. That would apply at New York as well, wouldn't it? A. Yes.

Q. Is there any direct service from New York to the 5787
Plate? A. About 160 vessels a year from New York to the Plate.

Q. Direct without stopping at Rio? A. Ours call in there occasionally.

Q. Any others? A. I don't know of any others. I say ours—some steamers that we own and others that we charter that are loaded by the Norton Line. They load our steamers.

Q. Any other vessels that you know of that carry general cargo stop at Rio on the way to the Plate from New York? A. I don't recall any. 5788

Q. Do you know whether the Lamport & Holt Lines do? A. I think they do.

Q. Do you know whether the Prince Line? A. I am not certain, I think they do.

Q. Can you tell to what extent these independent lines from Europe carry cargo such as steel to Brazil? A. Very large quantities.

Q. A large percentage of the total shipped from Europe to Brazil in your judgment? A. I think the greater proportion of it.

Q. Well now, do you know whether or not, Mr. Farrell,

5789 as a business proposition, the conference lines in Europe are solicitous to get that traffic, or whether they make any special effort to get any? A. They make a special effort to get as much as they want of it.

Q. That would be, in other words I suppose, they can only carry a certain amount on a steamer, is that it, profitably I mean? A. There is a large movement of high grade merchandise from Europe to Brazil that does not come from here at all; all sorts of material, velvets, silks, wines and so forth.

5790 Q. That is valuable cargo you mean, more valuable as a rule than cargo from here? A. What they call good paying freight.

Q. And that would result probably in their not having the same anxiety to get the rough stuff as these—— A. They need a certain proportion of it.

Q. But a large quantity of it they would not try very hard to get, would they? A. I don't think it would be good business for them if they were running a line for the purpose of making money.

5791 Q. The result is anyway that a very large portion of the business of the European competitors to Brazil moves via these independent lines? A. It does.

Q. There has been testimony in this case to the effect that this parity of rates has been a beneficient thing for the American shipper. Now, in this instance if the parity of rates is between the conference lines here and the conference lines abroad and the bulk of the stuff from abroad moves by independent lines which charge less than the conference rates over there, the parity of rates would operate very detrimentally to the American shipper, would

5792 it not? A. That is another hypothetical question.

MR. BALDWIN: It is meant to be.

THE WITNESS: Is it meant to be a hypothetical question?

Q. No, I base it on your answer that you think the greater part of your competitors' stuff moving to Brazil is moved by these independent lines. Now, I say if the American conference here maintains a parity, not with these independent lines who are actually serving your competitors, but with the conference abroad who are only in a small degree actually serving your competitors, then

does not that parity of rate maintained between the two 5793
conferences operate detrimentally to your company? A. Not in so far as there is available space to carry our material is concerned. I think the rate on steel products, full cargoes up to the point that the general cargo should be, say 1,500, 2,000 or 2,500 tons, that those rates are probably not very far from full cargo rates. As I explained to-day, shipping in full cargoes is not always so much a question of freight rate as it is a question of carrying out a contract obligation to get a certain tonnage and sometimes only that tonnage at the port at a certain time. 5794
There is a question of seasons in these countries in which building is carried on and all that sort of thing. There are a great many elements that enter into that that makes it difficult to answer a specific question.

Q. Do you mean then that your competitors cannot get any better rates from these independent lines up to a certain quantity than they can get from the conference lines? A. That is sometimes the case.

Q. Is it always? A. Not always, no. It depends on the charterer.

Q. If it is true that a fixed parity of rates is maintained 5795
between the two conferences if the independent lines over there offer a service that is cheaper than the conference rates, then it would operate, wouldn't it, to your detriment? A. It would in such a case.

Q. Is that not done rather frequently? A. I have no special information on that as to the frequency or infrequency.

Q. In answer to a question I think that Mr. Baldwin put to you, you said that you never bought space or engaged space without using it? A. All of our goods are 5796
all sold before——

Q. When you charter a steamer you use the steamer to the full capacity? A. Oh, yes.

Q. But you do not mean by that—you meant dead weight, didn't you; you didn't mean there wouldn't be vacant space? A. I meant dead weight. If we charter a steamer and pay for 8,000 tons of dead weight we put 8,000 tons of dead weight in the steamer.

Q. But as a matter of fact, upon your charters isn't there usually a large amount of actual space? A. Oh, yes.

Q. Even though the dead weight is all used up you

5797 have usually a large amount of space remaining unoccupied, haven't you? A. Yes.

RE-CROSS EXAMINATION by Mr. Kirlin:

Q. In speaking of competition which the conference lines had to Brazil are there not one or two that you have not mentioned; for instance, Hagar & Company of Philadelphia; don't they despatch a considerable number of ships to Brazil? A. They send quite a few. The last rails we booked with Hagar they turned over to the Lloyd
5798 Brazileiro. I don't know why, but they could not carry them, I suppose.

Q. That is a substantial competitor, Hagar's, is it not? A. It is an occasional competitor—I think when they have an opportunity they send steamers.

Q. How many in a rough way annually? A. About five or six.

Q. Is there a line called the Sampaio Carria Line? A. Yes; she had a steamer sailing the other day, the *Hermiston* I believe.

5799 Q. They run about one a month, don't they? A. Yes, one a month.

Q. Of course, there are tramps going from the Gulf? A. All the time.

Q. Now, with reference to the basis of fixing freight rates with relation to the cost of operation, is it a fact that freight rates throughout the world are fixed not only with reference to the cost of operation but also with reference to the fact that the vehicles of transportation are themselves marketable commodities and have a market value in the market; in other words, aren't freight rates
5800 based in some measure on the market price of tonnage of the world in accordance with the law of supply and demand? A. Well, that is probably more true in the case of tramp tonnage than regular lines.

Q. Well, true of any kind of vessels that are suitable to rent out to do occasional business, isn't it? A. Firms operating a regular line of vessels are not inclined to take those vessels off their regular service and charter them out if the opportunity exists to obtain a higher revenue.

Q. That is true, but if their rates are unreasonably high other vessels can be chartered and come in and avail themselves of those high rates in the service? A. Yes.

Q. And such rates maintain? A. Yes. 5801

Q. And to that extent at least the rates must be based with some reference to the law of supply and demand of tonnage? A. There is a relative basis, yes.

Q. Didn't you give us the statistics—I think you said you had them, of the products that are exported from Brazil to Europe that do not come this way? A. I have those statistics, yes.

MR. BALDWIN: I object to this.

MR. KIRLIN: We have not made any objection to any statistics Mr. Farrell has produced to-day. 5802

MR. BALDWIN: I am not going to object to its competency, that is to say, as to whether he made it or not; I make it on my general objection that it is not competent to the issues or a pertinent query. If Mr. Farrell is prepared to say that it is in his judgment or general knowledge correct, that is satisfactory.

A. These were compared in our Rio de Janeiro office from Government publications. 5803

MR. BALDWIN: As to first hand evidence I do not object to them, but it is as to their competency and materiality that I object to them.

MR. MONTGOMERY: What is it about?

THE WITNESS: It shows the import of commodities from Brazil to the United States, the imports of commodities from European countries into Brazil and exports from Brazil to the United States and exports to Europe.

MR. MONTGOMERY: Europe and America both ways, is that it? 5804

THE WITNESS: Yes, it is rather interesting information.

MR. KIRLIN: I offer this in evidence.

Marked Defendants' Exhibit 23.

MR. BALDWIN: It is taken subject to my general objection.

Q. Now, this statement shows that a vessel which is chartered for a single trip from here to Brazil, although she might not be in a position to get a return cargo from

5805 Brazil to New York would nevertheless have an opportunity to get a cargo from Brazil back to Europe or some other point, does it not?

MR. BALDWIN: I object.

A. Within the range of the exports.

Q. And the amount of the exports is stated in the table?

MR. BALDWIN: Same objection.

A. Yes.

5806 Q. With reference to insurance rates, Mr. Farrell, has there been any difference in the rates in your experience which you have had to pay on your export shipments by conference lines than those which you have had to pay on your export shipments by tramp vessels or by the Lloyd Brazileiro, if so, state what it is?

MR. BALDWIN: Same objection.

Q. Answer the question, Mr. Farrell, please, about the insurance.

5807

(Question read as follows: "With reference to insurance rates, Mr. Farrell, has there been any difference in the rates in your experience which you have had to pay on your export shipments by the conference lines than those which you have had to pay on your export shipments by tramp vessels or by the Lloyd Brazileiro; if so, state what it is?")

MR. BALDWIN: I make a further objection that that is not pertinent to any question asked on the re-direct.

5808

A. There is a difference.

Q. Will you state what difference and what it applies to?

MR. BALDWIN: The same objection.

A. In all commodities the insurance rates on all cargoes shipped by the Lloyd Brazileiro are about one-third higher than on the regular lines' boats, I think an increase of—I am not absolutely accurate about that—my impression is that it is about one-third higher in the case of chartered steamers, perhaps 40% to 50% higher than

regular rates, and in the case of the United States and 5809
Brazil steamship lines the insurance rates are the same as the conference lines' rates.

Q. With reference to the enquiry that Mr. Montgomery addressed to you about the parity of rates between the conference lines abroad and the conference lines here, isn't it the fact that such a parity affords all necessary protection in respect of shipments of the quantity that would be likely to be shipped on conference lines' ships, and that the lower rates that go by the outside lines from Europe are protected against here by you and by other 5810
shippers similarly situated through the medium of charters or by your own special lines?

MR. BALDWIN: Do you know your question has two aspects, Mr. Kirlin?

Q. Is it not plain to you, Mr. Farrell? A. It is plain to me, excepting that a steamer sailing from the other side might carry a thousand tons of sheet iron and another steamer might carry a thousand tons of rails. If the rates were different, but answering your question, I should 5811
say generally speaking, yes as a broad proposition.

RE-RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. And that is one of the reasons why you established this line, isn't it? A. Yes.

Q. Because you did not have sufficient amount of security or protection before you did? A. I do not know what you mean by security.

Q. In answer to Mr. Kirlin's question you just testified that you protected yourself in a way? A. We did not 5812
have sufficient facilities.

Q. And you could not get them from the conference lines either, did you? A. They were not available.

Q. They did not have them, did they? A. They frequently offered to charter vessels for us.

Q. If they did not have it in the regular line you mean? A. They offered to take care of our business if they did not have sufficient facilities to take care of the large volume of business which we were shipping.

Q. And they did not have sufficient facilities in their regular line boats, did they, and the way they offered to

5813 take care of it was to charter boats which you yourself could do quite as well? A. That was it, yes.

MR. KIRLIN: Or to increase the ordinary vessels?
THE WITNESS: Yes.

Q. With reference to the defendant's Exhibit 23 which you have produced here, the first page is statistics on imports from the United States and European countries into various Brazilian ports, gives the ports and then, under separate heads, the years, and bulks the amount of im-
5814 ports for each year, but does not show from which particular country it came from, does it; that is right, isn't it? It only bulks the imports into each port without showing from what country they came? A. Yes, but if you go on——

Q. I say the first page? A. The first page, yes.

Q. This exhibit doesn't purport to show what proportion of these imports were carried from, we will say, the European ports, the Brazilian ports, were carried by the conference lines, or by these independent lines, does it? A.
5815 They do not.

Q. Nor what proportion is carried from the United States by the conference lines or by the tramps or any other independent line? A. No.

Q. Or chartered vessels? A. No.

Q. The statistics here with reference to the ex[illegible] from Brazil to the United States and other countr[illegible] here are shown how they could go, that is to sav[illegible] in conference lines' boats or otherwise? A.

Q. Are you prepared to state, Mr. Fa[illegible] or
5816 not a considerable portion of the expor[illegible]om the Continental and British ports to Brazil as stated in this exhibit, are carried by the conference lines? A. No.

Q. Or what are carried by tramps? A. No.

Q. Well, it is a fact, is it not, that a good deal of it is carried by tramps? A. That would be my supposition.

Q. That is your judgment, is it? A. Yes.

Q. Quite a considerable portion? A. Yes.

Q. Is it true also that those tramps from Europe or Great Britain to the Brazilian ports have return cargoes and facilities for return cargoes? A. From Great Britain?

Q. Yes, those that go out? A. Yes.

Q. What is the proportion of the tramps or chartered vessels that go from Great Britain to Brazil, compared to that which go from the Continent to Brazil in this trade? A. Chartered ships? 5817

Q. Yes; in other words, which has the more? A. The Continent; nearly all of them.

Q. And then they have an equal opportunity with the conference lines to compete for and obtain whatever return cargoes there are to the Continent from Great Britain? A. As far as the Continent is concerned, yes.

Q. And not so great as to Great Britain? A. I wouldn't say quite so great. Sometimes the steamers go from Antwerp to Middlesboro and sometimes they start from Middlesboro and then go to the Continent and complete their loading. 5818

Q. Generally speaking? A. Generally speaking the larger percentage of them go direct from the Continent to Brazil.

Q. Then the value of the tonnage which Mr. Kirlin spoke of a moment ago, that has some relation to it, has it not, the fact that these tramps have an opportunity for return cargoes? A. Not necessarily. 5819

Q. Would a better tramp rate obtain from the Continent or from Great Britain to Brazil by reason of the possibilities of a return cargo from New York to Brazil where there was none? A. A better rate?

Q. Yes? A. It sometimes works the other way. The rate would be lower out to Brazil because of the opportunity to get a cargo back from Brazil.

Q. That is just what I mean? A. Yes, then that answers the question.

Q. Then you can get a better rate out from the Continent because of the possibility in a number of instances at least of a return cargo than you could from New York where you would not have one? A. Generally speaking, yes. 5820

Q. I mean a lower rate by that? A. Yes.

By Mr. Burlingham:

Q. As a matter of fact, the chartered boats that go from Europe to Brazil generally—don't usually take cargo direct back from Brazil; they go down to the Plate and get it, don't they? A. Quite a number of them do.

Q. Aren't most of your charters time charters? A. Yes.

5821 By Mr. Montgomery:

Q. These associations of merchants that you mentioned that existed abroad that could check the conference lines, that is an association of merchants, is it not? A. Yes, and shippers.

Q. Is there no association of consumers over there that you know of for the goods brought back from Brazil that have any potency to check the rates? A. I don't know of any.

5822 Hearing adjourned to Tuesday, October 14th, 1913, at 10:30 o'clock A. M.

New York, October 14th, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

5823 Messrs. BURLINGHAM, MONTGOMERY & BEECHER; by Charles Burlingham, Esq., and Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*

Messrs CONVERS & KIRLIN; by J. Park Kirlin, Esq., M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

Messrs SPOONER & COTTON; by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

5824 WILLIAM LOWRY, recalled on behalf of Petitioner, being first sworn, testified as follows:

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. Lowry, have you at the suggestion of Mr. Baldwin prepared some statistics showing the amount of cargo carried by the various conference lines in the years 1908 to 1912 inclusive? A. I have.

Q. Have you the statement with you? A. I have.

Q. Now, this information upon which this statement is based was obtained where? A. From the manifests of the conference lines.

MR. BALDWIN: Ships' manifests?

THE WITNESS: Ships' manifests.

Q. And that is the only source from which that par- 5825
ticular statement is made up? A. Yes, that is the only source.

Q. It is a mere computation then from the figures shown in the manifests? A. Compilations and computations.

Q. Now, I notice, Mr. Lowry, that the last sheet of these four that I have here appears to be this statement or compilation, and then there are some other sheets accompanying it and the whole seems to be entitled "Statement consolidating the yearly statistics," and so forth. 5826
Is that all prepared by you, that explanation and so on? A. Yes; it was all prepared by me.

Q. And in this explanation you refer to each column contained in your compilation and explain what that column consists of? A. Yes; I gave the explanatory sheet.

MR. MONTGOMERY: I offer that in evidence.

Batch of sheets marked Petitioner's Exhibits 323 and 323-A.

CROSS-EXAMINATION by Mr. Kirlin: 5827

Q. Mr. Lowry, as I understand the statement, column 1-A embodies the total carried by the three lines of the class of cargo, of the commodities, denominated bulk cargo, list of which is embodied in your explanatory note column 1-A? A. That is the case.

Q. And column 1-B represents the totals of the freights on these commodities? A. It does.

Q. Column 2-A is a resumé of the total amount of the general cargo carried by the three lines, including under 5828
that designation all the cargo carried which is not specifically enumerated in the list of bulk cargo? A. That is correct.

Q. Which totals in column 1-A? A. Yes.

Q. 2-B is the freight on the total general cargo? A. That is the case.

Q. Column 3-A shows the cubic feet of both the bulk cargo and the general cargo referred to in 1-A and 2-A, is that right? A. Yes, that is correct.

Q. And 3-B is merely an addition of the amounts of freight on the bulk cargo and the general cargo as pre-

5829 viously set forth in columns 1-B and 2-B? A. That is correct.

Q. Now, won't you explain in your own words the following columns a little more in detail, what the matter is which you found in columns 4, 5, 6, 7 and 8? A. Column 4 shows the per cent. which the bulk cargo in column 1 forms of the total amount of cargo carried by the line opposite, which is shown in column 3. Column 5 shows the percentage which the general cargo in cubic feet shown in column 2-A forms of the total cargo carried in
5830 cubic feet shown in column 3-A for each line.

Q. Six? A. Column 6 shows the average rate per cubic foot on all commodities carried by the line opposite.

Q. That is as enumerated in—— A. All commodities.

Q. In all three columns? A. All commodities. And column No. 7 shows the average rates on the commodities which are enumerated and appear under the head of bulk cargo, column 1. Column 8 shows the average rate on general cargo per cubic foot. Column 9 shows the amount of primage collected or received by the Lamport & Holt Line for each year. The totals show in column 1 all bulk
5831 cargo carried by the three lines, cubic feet, and the amount of freight in dollars and cents. Column 2 total shows the entire number of cubic feet carried by the three lines of general cargo with the corresponding revenue. Column 3 total shows the gross number of cubic feet carried by all three lines and the total amount of freight received for it. Column 4 shows the percentage which bulk cargo forms of all the cargo carried by the three lines. Column 5 shows the percentage which general cargo forms of all the cargo carried by the three lines. Column 6 shows the
5832 average rate per cubic foot received for the carriage of all cargo by the three lines. Column 7 shows the average rate per cubic foot on the bulk cargo carried by the three lines. Column 8 shows the average rate per cubic foot on general cargo carried by the three lines.

Q. What is the basis of the statement? A. The steamer manifests of the various lines—the three conference lines.

Q. Is this merely a statement of outward shipments? A. A statement of the outward shipments.

Q. Nothing to do with the homeward shipments? A. Nothing to do with the homeward shipments.

DIRECT EXAMINATION by Mr. Montgomery resumed: 5833

Q. I notice that the average rate charged on general cargo by the different lines varies; is that because the different lines charged a different rate on the same article? A. No.

Q. In going over the manifests what did you find as to whether the same rate was charged by all the lines? A. As far as I went in that direction I found that the same rate was charged.

MR. SPOONER: How far did you go?

THE WITNESS: I did not check up every item in 5834
the manifests.

MR. SPOONER: How far did you go?

THE WITNESS: I went to the extent of checking up half a dozen commodities.

Q. Then how do you explain this difference in rate? A. Each line having—each line carrying a different percentage of some particular commodity which took a different rate from some other commodity.

Q. And where one line appears to have obtained a dif- 5835
ferent rate from another line on bulk cargo carried, for example, that would mean, would it, that the one line was carrying a different class of bulk cargo? A. A class of bulk cargo which took a different rate from the other.

Q. This discrepancy in the rates charged on the total amount of cargo carried would be explained in that way? A. The difference, yes, would be explained.

Q. And the difference in the rate on general cargo and on bulk would all be explained in that same way? A. The same way.

5836

Q. That is by the different proportion and different class of cargo carried by the different lines? A. Taking different rates.

Q. Have you also prepared at Mr. Baldwin's suggestion a statement showing all the cargo carried from New York to Brazil by the Lloyd Brazileiro steamers, the conference line steamers and other steamers? A. I have.

Q. Have you that statement? A. I have.

Q. Is this it? (Showing witness paper) A. That is the paper.

Q. And from what sources was the information ob-

5837 tained, or figures obtained, which form the basis of this compilation? A. As far as the figures for the Lloyd Brazileiro are concerned, those were obtained from Petitioner's Exhibit in evidence in this case; the numbers I think were 235 and 239, A, B and C.

Q. Do you remember what those exhibits were? A. Those were the statements of the cargo carried from New York to all Brazilian ports by the Lloyd Brazileiro.

Q. Covering the entire period from 1908 to 1912 inclusive? A. Covering that period and giving the number of
5838 measurement tons of 40 cubic feet and the revenue derived from its carriage.

Q. I notice in your compilation you give the total cubic feet carried by the Lloyd, but you do not divide it into bulk cargo and general cargo? A. There were no figures available in their exhibits and on their statements by which a segregation of that character could be made.

Q. You have stated how you got the figures for the Lloyd. Now, as to the conference lines? A. As to the conference lines, these figures are taken from the exhibit
5839 now in evidence, 323.

Q. And the information as to the other steamers? A. Was taken from the original manifests on file in the Custom House—or, the copies of the manifests at least on file in the Custom House.

MR. KIRLIN: What are the steamers—the other steamers.

THE WITNESS: The other steamers are the steamers enumerated in Exhibit 212 as being the other steamers which left New York for Brazil loaded by parties outside of the Lloyd Brazileiro
5840 and the conference lines from the years 1908 to 1912 inclusive.

Q. Under the conference lines, under the column "Bulk cubic feet" appear the figures at the bottom 39.8%, what does that indicate? A. That is under the total number of cubic feet carried by the Lloyd Brazileiro for the period from 1908 to 1912, 39.8%, and indicates that of all the cargo carried from the Port of New York to Brazilian ports served by the conference lines, the Lloyd Brazileiro carried 39.8% of the cargo in cubic feet.

Q. And then the next figures, 55.8%, what is that? A. It 5841
shows the percentage of all the cargo which moved from New York to Brazil which was carried by the conference lines during the period from 1908 to 1912 inclusive.

Q. And the 4.4% in the same row of figures? A. Shows the percentage which was carried by the steamers other than the conference lines or the Lloyd Brazileiro.

Q. And in the lines below that, other steamers, bulk cargo, cubic feet and so forth. That statement contains then the proportion—at the bottom of the page—contains a statement as to the amount and per cent. of bulk 5842
cargo in cubic feet and of general cargo in cubic feet carried by these outside steamers? A. Yes, adopting the same classification as was done in making up Exhibit 323.

Q. And that I notice is for the years 1910 to 1912 only? A. For those years only could I get the data.

Q. 1910 to 1912 inclusive? A. For those years only could I get the data from which to make the segregation.

Q. They are lacking for 1908 and 1909? A. That is the case.

Mr. Montgomery: I offer that statement in 5843
evidence.

Marked Petitioner's Exhibit 324.

By Mr. Baldwin:

Q. This difference in the rate that appears on this Exhibit 323, even in the general cargo that appeared to be charged by the different lines to the conference, is that made up from the fact that your investigation showed that even in general cargo there was a difference in the quality of the cargo itself? A. Absolutely. Apparently 5844
each line carried the commodities which they were best adapted to carry.

Cross-Examination by Mr. Kirlin:

Q. I want to ask a further question or two with regard to Exhibit 323, Mr. Lowry. How were you able to transform weight cargo which was carried on the manifests on a weight basis into cubic feet so as to enable you to copy it in your column one as cubic feet? A. By consulting the manifests, you will see opposite each bill of lading showing weight of cargo carried, is also shown the num-

5845 ber of cubic feet which that weight of cargo occupies.

Q. Is that true of all classes of bulk cargo carried? A. That was true of all the cargo carried by the lines.

Q. So that you found on the manifests a statement of the cubic feet of all the cargo, whether carried by weight or measurement? A. Whether the basis on which it was charged was weight or measurement.

Q. Of course it was a fact that the very large part of this bulk cargo was not carried on a measurement basis, was it not? A. That is a fact.

5846 Q. And the rate charged for it was a rate per ton or a rate per 100 pounds? A. Rate per ton, or a rate per 100 pounds.

Q. Did you preserve any computation of the number of tons dead weight carried by the lines during these years which were paid for on a weight basis? A. No, sir.

Q. I am speaking now of bulk cargo? A. No, sir.

Q. What proportion of the cargo would you say in a rough way—of the cargo that is embodied in column 1-A of Exhibit 323—was carried according to the manifests as weight cargo instead of measurement cargo? A. Any

5847 opinion on that would be a guess. I couldn't say.

Q. It would be very much the larger proportion of them? A. I shouldn't say that.

Q. Shouldn't you? A. No, sir.

Q. What is your general impression about it? A. My general impression would be it does not form a larger proportion.

Q. Kerosene, for instance, goes not on weight nor on measurement? A. No, per case.

Q. So much per case? A. Which forms probably the

5848 largest of any individual item.

Q. Rails go on dead weight basis? A. Rails go on dead weight basis.

Q. Rails and fittings? A. Both.

Q. How about barb wire? A. Barb wire also.

Q. Corrugated iron? A. Also.

Q. Resin? A. Per barrel, 280 pounds.

Q. Neither weight nor measurement? A. Neither weight nor measurement.

Q. Flour? A. By the barrel also.

Q. Cement by the barrel or ton? A. Ton.

Q. Weight? A. Weight.

Q. Well, not any of the articles which you have included 5849
under the head of bulk cargo then appear to go by measurement? A. Kerosene practically goes by measurement, although the rate charged is on the case.

Q. The rate per case basis. No, but I am speaking of the facts according to the manifests? A. According to the manifests, no.

Q. None of this stuff goes by measurement? A. No.

MR. MONTGOMERY: Lumber, did you enumerate that?

THE WITNESS: Lumber goes by the thousand 5850
superficial feet.

Q. You have no lumber enumerated there? A. Lumber should be there.

Q. Perhaps you had better put it in? A. Yes.

Q. Write it in with a pen on the original?

(Witness inserts the word "lumber" in red ink on the sixth line of Exhibit 323-A after the word "fittings.")

5851

A. There was a very small quantity of coal covered by the lines which was also in there and which was less than probably one thousandth of one per cent. and I did not put it in.

Q. Now, in column 1-B, have you given us the totals as they are? A. From the manifests.

Q. Regardless of the fact—— A. Regardless of whether it was derived from measurement or weight cargo.

Q. Do you remember what number of cubic feet rails was said to occupy? A. No; each commodity was not segregated. They were taken in the group. 5852

Q. It was about 17 feet? A. It ranged from 10 to 18 feet.

Q. And by dividing the dead weight freight rate on rails by the number of cubic feet you get a relatively higher rate per cubic foot than you would get on other products which measured a larger number of cubic feet of the dead weight freight direct? A. Undoubtedly, but that is the rate which the lines received for the use of those cubic feet of space.

Q. What the manifests really show is what they received for carrying that much weight of rails, don't they? A. Also for carrying that many feet of rails.

5853 MR. BALDWIN: It shows both?

MR. MONTGOMERY: The same article is sometimes carried by weight and by measurement, isn't it?

THE WITNESS: Very often; whichever gives the largest revenue.

Q. What does column 1-B on Exhibit 324 show? A. The percentage of all the cargo which moved to Brazil which was carried by the Lloyd Brazileiro. This includes not only the ports served by the conference lines but ports in
5854 North Brazil served by the Lloyd Brazileiro and there is really a larger percentage than that which they carried of cargo to the ports served by the conference lines.

Q. Column 1-A represents the total number of cubic feet carried by the Lloyd Brazileiro? A. That is the case.

Q. And upon what basis is the 46% computed? A. In column 4 for the year 1908 is shown 9,528,822 cubic feet was carried to all Brazilian ports from New York—all Brazilian ports served by the conference lines.

Q. And 4,347,360 cubic feet as caried by the Lloyd Brazileiro is 46% of the quantity shown in column 4, is it?
5855 A. That is the case.

Q. As I understand, column 4 shows the total number of cubic feet of cargo carried by all steamships from New York to Brazil? A. That is the case.

Q. And in column 1-A representing the cubic feet carried by the Lloyd Brazileiro is 46% of the total as shown in column 4? A. That is the case.

Q. Column 2-D shows what? A. Shows the percentage which column 2-C forms of column 4, which is the total amount in cubic feet of all cargo which moved from New
5856 York to Brazilian ports served by the conference lines.

Q. And similarly 3-D shows the percentage of column 4 which is carried by the outside steamers? A. That is the case.

Q. I do not quite understand the significance of column 5? A. Column 5 shows what was carried by the—for the years 1908 and 1909 there were no figures available by which I could differentiate between the commodity which had been segregated in the statement, Exhibit 323 and the general cargo. For the succeeding years, 1910, 1911 and 1912 this information was available. So, in order to see what percentage the total amount of cargo carried by the

outside steamers constituted of the bulk cargo as segregated and of general cargo segregated I separated these three years and placed them at the bottom of this statement with the corresponding percentages. 5857

Q. That is the same matter, isn't it, that is shown in the three lower lines, under columns 3-A, 3-B and 3-C? A. That is the same matter which is shown in those three lower lines.

MR. MONTGOMERY: The percentages are lacking in 3-A that appear in 5, aren't they?

THE WITNESS: The percentages are in a line with the totals below the column. 5858

MR. MONTGOMERY: That is in five?

THE WITNESS: Below the column headed 5.

MR. MONTGOMERY: They do not appear anywhere else, those percentages?

THE WITNESS: No.

Q. What is the percentages that appear in 3-D on the three lower lines? A. Percentage which the—as an example, in 1910 in column 3 there appears 202,402 cubic feet; this is 1.5% of the cargo in cubic feet carried from New York to Brazil that year. 5859

Q. As shown in column 4? A. As shown in column 4. While the percentages under 5-A and 5-B show the percentage which the amount of bulk and general cargo carried by outside steamers formed of the total amount carried by the outside steamers and has nothing to do with the total amount carried to Brazil.

Q. In other words, the columns 5, 5-A, 5-B and 5-C show that of the total amount of the cargo carried by outside steamers 78.4% was bulk cargo as defined in a previous statement and 583,000 odd was general cargo? A. That was the case. 5860

Q. And that constituted 21% of the whole carried by the outside steamers? A. That is the case.

DIRECT EXAMINATION by Mr. Montgomery, continued:

Q. Mr. Lowry, there has been some testimony here about the competition and potential competition of tramp steamers. Does a tramp steamer loading with rails, for example, have any disadvantage as compared with the con-

5861 ference steamer carrying all sorts of cargo and carrying partly rails and partly general cargo? A. Yes; in fact, they receive a very much smaller revenue on their cubic capacity.

Q. That is to say the tramp does? A. The tramp does.

Q. And how is that? A. Because, as Mr. Daniels stated in some letter which is in evidence here, you would sink the ship before you would get her loaded two-fifths full.

Q. Have you prepared a statement showing how that law would operate or does operate using instances of
5862 particular steamers? A. I have.

Q. Have you that statement here? A. I have.

Q. And what steamer does that statement relate to? A. It relates to the steamship *Numantia* of the Hamburg-American Line on its voyage from New York to Brazil, November 15th, 1912, and the steamship *Santa Ursula* of the same line, voyage of December 6th, 1912.

Q. In making up that statement, Mr. Lowry, what sources of information did you go to? A. The manifests of the steamers designated.

5863 Q. That is, the manifests furnished by the Hamburg-American Line themselves? A. That is the case.

Q. And, by the way, those were the manifests used in all these compilations, the manifests furnished by the lines themselves? A. Those were the manifests used in all these compilations, furnished by the lines themselves.

Q. From what source did you obtain dead weight capacity of the steamers? A. That was given by Mr. Walthers of the Hamburg-American Line.

Q. Of Funch, Edye & Company? A. Yes, Funch, Edye & Company.

5864 Q. And the cubic capacity of the steamer? A. Also given by him and the figures on the manifests which show the actual amount in cubic feet of cargo carried.

Q. And the number of tons of coal burned per day, where did you obtain that information? A. From Mr. Walthers of Funch, Edye & Company.

Q. You do not mean, do you, that all of the information came from the manifests? A. I do not mean—I do not. I mean the information as far as the——

Q. Weight of the cargo carried—— A. The date of the sailing—the steamship date of sailing; the entire weight of cargo carried; the extract from manifests giving the specific quantity of steel carried—steel rails.

Q. And bundles of accessories? A. And bundles of ac- 5865
cessories. The measuremem total cargo carried, the total freight revenue received are derived from the manifests.

Q. Now, if you will just take up the other items and tell us where you got that information? A. The 7,240 tons dead weight capacity of the steamer was from a statement made by Mr. Walthers of Funch, Edye & Company. The cubic capacity of the steamer which appears under that was also given by Mr. Walthers of Funch, Edye & Company. The coal consumption was given by Mr. Walthers, the computations regarding the number of cubic 5866
feet in which a ton was stowed was made from the manifests, as was the rate per cubic foot received. Also the average rate per cubic foot on all cargo carried was a computation made from the manifests.

Q. And the weight of the cargo as shown on the manifests appears in pounds? A. Appears in pounds.

Q. And you reduced that to tons? A. Reduced it to tons.

Q. Yourself? A. Yes. I think the only figures appearing in the upper part of this statement not taken from the manifest is the allowance of 150 tons for dunnage and 5867
stores which are estimated. The only figures I did not derive from either Mr. Walthers or from the manifests is the 150 tons allowed for dunnage and stores which I estimated.

Q. State whether or not you have had sufficient experience in loading steamers to know or so as to be able to estimate that accurately? A. I think I have.

Q. And you think that is a fair estimate? A. I think that is a fair estimate.

Q. And this statement shows then that in addition to the weight of the cargo actually carried and the 150 tons 5868
for dunnage and stores it would have been possible to load on 1,577 tons more, including coal? A. That was a balance of dead weight capacity of 1,577 tons.

MR. KIRLIN: You mean by that she did not have a full load?

THE WITNESS: She had 1,577 tons available for coal. I don't know how much she carried, but her dead weight capacity would allow her to carry 1,577 tons of coal.

**Q. In other words, the 1,577 tons of dead weight buoy-**

5869 ancy is that what it amounts to, isn't it, remaining in the ship? A. That is the case.

Q. This entirely exhausted the dead weight capacity of the ship, after she is loaded with her cargo and dunnage and stores, but not the coal? A. That is the case.

Q. Now, state whether or not on computing the voyage that she actually made 1,577 tons would be approximately the amount of coal that she would be obliged to carry leaving New York, assuming that she burns 33 tons per day, which Mr. Walthers states she burns? A. It would be a
5870 safe margin if she steamed nine knots as these conference steamers presumably steam, it would be a fair amount of coal.

Q. I take it then that with the amount of coal absolutely necessary to carry she would just about exhaust her buoyancy? A. That is the case.

Q. You have figured here in this memorandum the rate of freight actually obtained on 94 steel rails and 28,600 bundles of accessories carried on that steamer; you say you have figured the rate per cubic foot? A. I did.

5871 Q. To be 36.7c per cubic foot, that is correct? A. That is the case.

Q. Now, that is, taking the amount of money obtained for carrying those rails and the statement from the steamer's manifest of the number of cubic feet they occupied, is it not? A. That is it.

MR. KIRLIN: Is that 36.7c per cubic foot the price for the space that they occupied or is that the price for the total space of the ship?

THE WITNESS: No, that is the price for the space
5872 occupied by the steel.

MR. KIRLIN: Did she have anything else but the steel?

THE WITNESS: She had 303,085 cubic feet of cargo.

MR. KIRLIN: In addition to the steel?

THE WITNESS: Including the steel.

MR. KIRLIN: What did she have in addition to the steel?

THE WITNESS: By making a subtraction of 12,678 cubic feet from 303,085 cubic feet you will arrive at what she had in addition to steel.

Q. You figured also the rate of freight actually obtained 5873
on all the cargo per cubic foot to be 24.3c, is that correct? A. That is correct.

Q. Now, the comparison below is a statement of what the result would be had this same steamer been loaded to her full dead weight capacity with rails and obtaining the same rate of freight per ton, namely, $6.60, which was obtained on this voyage, is that right? A. That is correct.

Q. And you used the same figures, of course, as to her dead weight capacity and assumed that she would burn the same amount of coal in that compilation? A. Using 5874
the same figures in both compilations.

Q. And state the rate per cubic foot that your figures show would be obtained? A. 12c per cubic foot would be obtained in loading the same steamer to its dead weight capacity with cargo of the same kind, that is, rails and accessories at the same rate.

MR. KIRLIN: Is that the same cubic foot you embody in the upper statement?

THE WITNESS: It is the same old cubic foot.

MR. KIRLIN: Cubic feet of space occupied? 5875

THE WITNESS: No, that is cubic feet on the whole capacity of the steamer.

MR. KIRLIN: Then it is not the same old cubic foot?

THE WITNESS: It is the same old cubic foot.

Q. Of course, when I say rails I mean rails and accessories in the same proportion as they were carried on this voyage? A. That is what I presume you meant, as shown 5876
on the extract from bill of lading No. 9.

Q. In other words, you have shown in the statement as to the actual voyage of the *Numantia* that her rate of freight per cubic foot on steel was 36.7c per cubic foot? A. Yes.

Q. And that her rate on all the cargo which she actually carried was 24.3c per cubic foot on that voyage? A. That is the case.

Q. The steamer *Numantia* on that voyage was loaded substantially full to her carrying capacity inclusive of the coal, was she not? A. That is so.

5877 Q. Both as to dead weight and as to measurement? A. That is so. She was apparently an ideally loaded steamer.

Q. Now, if this steamer were loaded with rails to her dead weight capacity she would not be loaded, or could not be loaded, to her full capacity of cubic feet I suppose, could she? A. She could not. She would have about 200,000 cubic feet of vacant space.

Q. And that is what you mean where you say leaving unoccupied 203,851 cubic feet? A. That is what I meant.

Q. That is exclusive of the coal space? A. Exclusive
5878 of the coal space.

Q. And while she would get on the steel carriage—actually carried—the same rate per cubic foot as she did on this actual voyage, it would leave her with 203,851 cubic feet of vacant space, for which she got nothing, is that correct? A. That is correct.

Q. And the rate of 12c per cubic foot, that is next to the last item in the last column, shows the rate per cubic foot on the actual carrying capacity, assuming that she was carrying her full capacity on this voyage? A. It shows
5879 the rate per cubic foot on the total cubic foot carrying capacity of the vessel when she is loaded to her dead weight with a cargo of rails and accessories alone.

Q. And shows just that her earning on her carrying capacity will be 12c per cubic foot as against 24.3c on the actual voyage? A. That is it exactly.

Q. Now, similarly with the steamship *Santa Ursula*, sailing on December 6th, 1912, New York to Brazil, how would a tramp steamer loaded with rails and fittings—charging the same rate as the *Santa Ursula* obtained per ton—how would such a steamer compare in its earnings
5880 with the actual voyage of the *Santa Ursula?*. A. She would receive 14.2c per cubic foot on her cubic measurement capacity when loaded to her dead weight as against a rate actually obtained on all cargo carried of 21.2c per cubic foot.

MR. MONTGOMERY: We offer that paper in evidence.

Marked Petitioner's Exhibit 325.

Q. Did you select these two steamers for some reason, or why did you make this memorandum naming these

two steamers? A. I selected these two steamers for the 5881
reason that they were the only two where the manifests had all the information in such shape that I could make the computation necessary.

By Mr. Baldwin:

Q. Mr. Lowry, with reference—you started to answer some question but did not finish, and Mr. Montgomery asked you another question, somewhere back there in the testimony; but have you any other fact with reference to this exhibit now offered which you want to explain, either 5882
in the making up of the exhibit or in the substance of it? A. I think that I—I don't remember the circumstances, but I think that I wanted to explain just what has been explained now, that the reason I took these two steamers was that they were the only two where the manifests had all the information available.

Cross-Examination by Mr. Kirlin, continued:

Q. Does this Exhibit 325 show the amount of general cargo that that steamer carried? A. It shows no separa- 5883
tion between the general cargo and the bulk cargo. It shows a total amount of cargo carried by the steamer, both in cubic feet and in weight.

Q. The total cargo carried measured 303,085 cubic feet? A. Which one are you speaking of now?

Q. The *Numantia*? A. That is the case.

Q. How much of that was occupied by measurement of the rails? A. 12,678 cubic feet.

Q. Where did that appear? A. Just preceding that on the extract from the manifest, bill of lading No. 9. 5884

Q. That was the measurement of the rails, was it? A. Yes, sir.

Q. And the measurement of the total cargo carried was 303,085? A. Yes, sir.

Q. How much was the measurement of the general cargo then? A. The measurement of all the remaining cargo probably including some weight cargo or bulk cargo, was 290,407 cubic feet.

Q. What I do not understand about this is why the average rate of cargo a cubic foot was less than a cubic foot rate on the rails? A. Because the cubic foot rate on

5885 rails showed 18 cubic feet stowed to the ton, while the balance of the cargo stowed in a much larger space—occupied more space.

Q. We have been told by the testimony adduced by our learned friend here, that measurement cargo generally takes more than weight cargo? A. It does not per cubic foot and the intention of this exhibit is to show that.

Q. Can you tell us what the other cargo was that that ship carried besides rails? A. I could not without referring to the manifest.

5886 Q. What year was it that she sailed in? A. 1912.

Q. According to your computation she received an average rate per cubic foot on all cargo carried almost as large, namely, 24.2c as against 24.5c as the rate received by the Prince Line, received as the average rate per cubic foot of general cargo received by the Prince Line for the whole year of 1912? A. That is the case.

Q. This is a hypothetical case, of course, this second case? A. I have never seen any ship loaded entirely with rails; hypothetical as far as the cargo is concerned—as far as the cargo of steel is concerned.

5887 Q. You have not had before you any case of a complete load of rails on a tramp ship, an actual case? A. I have known of cases, yes, but it was not any specific case which I had in mind. It is the same steamer. It is the cargo that is hypothetical.

Q. I wondered whether you had actually worked out the result on any tramp steamer that carried rails and accessories? A. No, that would be the result with that steamer loaded with rails and accessories.

5888 MR. MONTGOMERY: The same principle would apply on any one?

THE WITNESS: The same principle would apply on any steamer except that the cubic capacity and dead weight and different ratio of the cubic capacity to the dead weight would change the figures somewhat, as steamers vary.

Q. Steamers vary in that comparison? A. Yes; a part awning deck steamer or an awning deck steamer would have a larger cubic capacity for its dead weight than a three island steamer.

RE-DIRECT EXAMINATION by Mr. Baldwin: 5889

Q. You were asked by Mr. Kirlin as to whether or not that the average rate actually obtained by the steamer *Numantia* as appeared in Exhibit 325, 24.3c per cubic foot, was almost as large as that the Prince Line obtained as shown by the average in Exhibit 323; what explanation have you for that? A. There are two possible explanations, and which one is the right one I could not say. One is that the Hamburg Lines succeeded in getting a better class of cargo than the Prince Line. Also they served more outports than the Prince Line and, therefore, their 5890
average rate would be higher. Another one is that——

MR. KIRLIN: She got less, didn't she?

THE WITNESS: 2/10 less. Which would explain that the rate received on all cargo for the Hamburg Line was almost as much as received by the Prince Line on general cargo segregated from bulk cargo. Another explanation to this would be that the rates were raised in the latter part of, or in 1912—I think it was in March. This average rate of the Prince Line on general cargo 5891
includes three months when they received a rate lower I think about 10% than they did during the last nine months of the year, while in the case of these two steamers, the *Numantia* and *Ursula*, both of those were in the month of December, after this rate had been advanced.

Q. How long were you engaged in making up this compilation, Exhibit 323. A. About—practically three months.

Hearing adjourned to Friday, October 17th, 1913, at 10:30 o'clock A. M. 5892

5893 New York, October 17, 1913.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

Messrs. BURLINGHAM, MONTGOMERY & BEECHER; by Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*

Messrs. CONVERS & KIRLIN; by J. Parker Kirlin, Esq., and M. W. Maclay, Jr., Esq., for the Prince Line *et al.*

5894

Messrs. SPOONER & COTTON; by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

Mr. Charles C. Burlingham asked an adjournment owing to the fact that Mr. Charles Burlingham expected to be actively engaged in the trial of a case before Hon. Holt, *J.*, this morning.

THE EXAMINER: I will set down the matter for Tuesday, October 21st, 1913, at 10:30 o'clock A. M. as peremptorily as I can make it, and it is suggested that counsel having this notice hold matters open

5895 and be prepared to go on at that time.

New York, October 21st, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

EARNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

Messrs. BURLINGHAM, MONTGOMERY & BEECHER; by Charles Burlingham, Esq., and Charles C.

5896 Burlingham, Esq., for Frederick T. Busk, *et al.*

Messrs. SPOONER & COTTON; by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

Messrs. CONVERS & KIRLIN; by J. Parker Kirlin, Esq., and M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

WILLIAM LOWRY, recalled.

DIRECT EXAMINATION continued by Mr. Montgomery.

Q. Mr. Lowry, have you made a statement from the files furnished by Hard & Rand in regard to the amount of

coffee imported to New Orleans from Brazil from 1908 to 1912 inclusive? A. I have. 5897

Q. What were the files that Hard & Rand furnished you? A. These are the files, giving the name of the steamer, the date of her arrival and the number of bags of coffee which she carried.

Q. You say files, what do these consist of? A. They contain statements made by S. Jackson of New Orleans, who is apparently a warehouse man of coffee, and furnishes these statistics to the coffee importers in New York.

Q. And how are they kept by Hard & Rand, bound in volumes? A. Bound in volumes. 5898

Q. And this is the statement, is it, that I show you? A. That is the statement.

MR. MONTGOMERY: I offer this statement entitled "Coffee carried to the Port of New Orleans from Brazilian ports by all steamers from 1908 to 1912 inclusive," and ask to have it marked for identification.

Marked Petitioner's Exhibit 326 for identification. 5899

CROSS-EXAMINATION by Mr. Kirlin:

Q. Does this statement, Petitioner's Exhibit 326 for identification, purport to be anything else than a compilation of the information which you found in those books of Hard & Rand containing Jackson's circulars? A. With the exception of one item, nothing. The one item is the amount of coffee carried into New Orleans on Arbuckle's chartered ships which was obtained from Mr. Humphrey of Arbuckle Company.

Q. Obtained from Arbuckles? A. Yes. 5900

Q. That is not in this? A. That does not show in the compilation. It appears in the compilation, but does not appear in the files.

MR. MONTGOMERY: That is, the Hard & Rand files.

THE WITNESS: Yes, sir.

Q. These statements on the front page of the exhibit, a statement of coffee carried by all steamers includes the total number of bags carried by the different lines, merely

5901 means the total number as shown by Sam Jackson's reports that are in those books? A. That is it, and verified as far as the Lloyd Brazileiro is concerned by the employes of the Lloyd Brazileiro Line as to the vessels, but not as to the number of bags.

Q. Do you mean you have embodied in this some information obtained from the Lloyd Brazileiro? A. No, a verification of some information which I obtained from the files.

Q. Do you mean that the number, total number of bags,
5902 carried by the Lloyd Brazileiro is based in part upon what is in the book there and part upon enquiries you have made of the Lloyd Brazileiro? A. The number of bags is based on the information which I derived from the book. As to these steamers which are shown in this book as having carried these bags this information was verified by Mr. Slechta of the Lloyd Brazileiro.

MR. BALDWIN: They being the owners or charterers of the vessels?

THE WITNESS: That is the case.

5903 Q. Explain that a little more so that I can understand it, on the record. A. In order to eliminate all coffee carried by other than the conference lines I went to the Lloyd Brazileiro to see if these boats which were shown in this file and which I presumed to be Lloyd Brazileiro boats, were Lloyd Brazileiro boats.

MR. BALDWIN: And do you say that they were?

THE WITNESS: I say that they were.

5904 Q. You are speaking now of the list of steamers on the second page of the paper? A. Yes, those are the steamers of which I am speaking.

Q. And those are the ones that you were enquiring about? A. Those are the steamers regarding which I made enquiry.

Q. But whether there may have been other coffee carried to New Orleans than in those boats you don't know? A. From the records in this case I should decide that there was no other coffee.

MR. BALDWIN: The question is whether you know?

THE WITNESS: I don't know, no.

Q. Or whether that Hard & Rand—or whether that file of 5905
Hard & Rand is a complete list of all the circulars issued by Sam Jackson, you don't know? A. I don't know.

CROSS-EXAMINATION by Mr. Burlingham

Q. Now, referring to Exhibit 325, which is an analysis of the manifest of the *Numantia*, will you kindly let me see the manifest of the *Numantia*?

(Witness produces manifest.)

Q. The first page of Exhibit 325 purports to give an 5906
analysis of the manifest of the *Numantia* on a voyage from New York to Brazil, November 15th, 1912, and at the bottom of that page is a hypothetical case given of the same steamer carrying a full cargo of rails, is that right? A. Yes, sir.

Q. Now, the latter according to this statement, you made the average rate on rails per cubic foot 12c, is that right? A. Yes.

Q. And is that the net return? A. That is the gross return.

5907

Q. What do you mean by the gross? A. That multiplied by the number of cubic feet of contents compared to the total revenue which the steamer actually carried.

Q. Earlier on the sheet you give the average rate per cubic foot on the *Numantia* according to this particular manifest also 15? A. That is it.

Q. And you made that average 24.3 per cubic foot, is that also gross? A. That is gross.

Q. In the hypothesis that you have made for yourself do you assume that these rails are carried from New York 5908
to Rio or where? A. To whatever port—Santos I think was the port to which the steamer went.

Q. And when you note the amount of coals and stores you are considering a voyage from New York to Santos, is it? A. From whatever port is indicated.

Q. I don't think it states the port; it says to Brazil? A. The same port which the manifest shows the steamer went to.

Q. Let me see whether I understand you. I understand you to say that in your hypothesis you have assumed that the *Numantia* was carrying a cargo of rails to one port,

5909 and what port is that? A. I presume that the steamer carried out the same voyage which she carried out in her manifest. The voyage is not hypothetical, it is the cargo that is hypothetical.

Q. But, as a matter of fact, when a full cargo of rails is carried they are not carried to a large number of ports, are they? A. No.

Q. You have never known of such a case, have you? A. I could not state whether they have been carried to a number of ports.

5910 Q. You have stated these manifests of full cargo—the United States Steel Products Company, for instance, does not send a full cargo of rails to a series of six or eight ports in one vessel, do they?

MR. MONTGOMERY: How would these manifests show that?

A. The manifest does not show what the United States Steel Products Company did.

Q. You heard Mr. Farrell's testimony? A. I have not heard him testify on that point.

5911 Q. Don't you know as a practical man that when a shipper ships a full cargo of rails he confines them to one port? A. Not always.

Q. You have never heard of it being confined to several ports, five or six, have you? A. I never heard of it being consigned to a number of ports.

Q. When I look at this manifest of the *Numantia* I find that the actual cargo of the *Numantia* sailing November 16th, 1912, was destined for Pernambuco, Victoria, Rio, Santos, Paranagua, Rio Grande do Sul, Port Alegre, that

5912 is eight ports, and that would be for general cargo I suppose? A. For general cargo as well as——

Q. Who pays the landing charges? A. Without the manifest in front of me I could not say.

Q. Usually who pays it? A. Usually the consignee.

Q. Look at that and see if you can tell from that manifest? A. It is shipped F. F. A.——

Q. I am not asking you about rails; I am talking of general cargo? A. Speaking generally, of general cargo, it is usually the consignee that pays it; on this manifest there is a landing charge of $1.80 per ton for Rio de Janeiro.

Q. Did you in making up the freight returns add that? 5913
A. I have included every revenue received by the lines.

Q. Including that? A. Including that.

Q. In order to get at your 24.3c you took not only nominal freight in the bill of lading, but the landing charges? A. I took all the revenue received by the line.

Q. I refer, Mr. Lowry, to the landing charges, you included that? A. Yes.

Q. Now, as you say, rails are F. F. A., aren't they? A. Usually sold F. F. A.

Q. In that case all the ship has to do is to put them 5914
over the sides into the lighter? A. Yes.

Q. And they are paid for by the consignee? A. By the steamer.

Q. Of course, the port charges would be very much heavier going to eight ports than going to one port? A. Naturally.

Q. To return for a moment to this manifest, you have included the lighterage charges too, haven't you? A. Yes, those are the lighterage charges; that is what I mean, the lighterage charges.

Q. Then, according to this first page, Exhibit 325, the 5915
comparison you have made is between a ship carrying rails and general cargo to eight ports and the same steamer carrying a full cargo of rails to one port, is that it? A. You may take that as a comparison, yes.

Q. And is that so also with the *Santa Ursula?* A. I think the *Santa Ursula* only went to two ports, to Rio and Santos, if I am not mistaken.

Q. Yes, Rio and Santos; and have you assumed in the hypothetical case based on the *Santa Ursula* that she carried a cargo of rails to one of these two ports, and if so, 5916
which? A. Santos; the same port to which rails went in the actual voyage.

Q. And in the case of the *Santa Ursula* you have added the landing charges and lighterage charges? A. There is no landing charge at Santos.

Q. You generally look and see if there are any landing charges there; look at that and see what extras there are? A. Give me the number of the bill of landing?

Q. No landing charges there? A. No landing charges there.

Q. What extra charges were there; any lighterage charges? A. No extra charges on rails.

1479

5917 Q. I am not talking about rails; heavy lifts? A. There may be extra charges for heavy lifts at Santos. I find a number of heavy lifts on some cargoes.

Q. Now, I notice on this very manifest which you have been speaking of, the *Santa Ursula*, when I look at it I find a great many charges for lighterage, but I suppose that relates to Rio? A. That probably relates to Rio.

Q. And landing charges too, are there not? A. Conditional landing charges.

Q. What does that mean? A. That the lines charge the
5918 shipper of the goods a certain amount of money which they state that they will refund provided a certificate is given by the consignee of the cargo, or the ship's agent in Rio, that this was landed on the quay.

Q. That sometimes is possible, of course, that it does not go on lighters, but goes on the quay? A. It is possible.

Q. But it is not possible to tell from the manifest what happened? A. What happened.

Q. How did you deal with it? A. I dealt with the revenue received by the steamship and there is no evidence of any return, so I included it.

5919

MR. KIRLIN: It would not be evident on the manifest?

THE WITNESS: I say they had none.

Q. In the case of the *Numantia*, one of the ports is Pelotas, where is that? A. Pelotas is a port near Rio Grande do Sul. It is my impression that freight is transshipped there.

Q. You mean from Rio Grande do Sul? A. I mean from Rio Grande do Sul.

5920 Q. In fact, on one sheet of this same manifest, the third from the last, it appears that shipments for Pelotas are via Rio Grande do Sul; it appears on the three last sheets, doesn't it? A. Yes.

Q. Now, can you tell from this manifest what the charges were for that transfer? A. There is nothing here which shows on the 1,300 freight measurement which was carried there.

Q. Have you any experience of the cost of that transfer? A. Transferring 1,300 feet measurement from Rio Grande do Sul to Pelotas? No.

Q. You added that, did you, in making up the exhibit?

Q. You cannot conceive of rails having any such burden, 5921
can you? A. I cannot, no.

Q. What is the value, then, of the comparison between a rail shipment and a general cargo shipment with eight ports? A. The figures show what the value of it is.

MR. BURLINGHAM: Let us have these two manifests marked, the manifest of the *Numantia* and *Santa Ursula*.

Manifest of steamship *Numantia* marked Defendant's Exhibit 24.

Manifest of steamship *Santa Ursula* marked De- 5922
fendant's Exhibit 25.

Q. This port of Port Alegre, does cargo have to be transshipped for that port also? A. That is my information.

Q. That involves further expense for the ship I suppose? A. It does.

Q. You added that in trying to work up the total?

MR. BALDWIN: Mr. Burlingham, do you offer in these two exhibits these lead pencil additions that 5923
are made here? Obviously they cannot go in and I shall have to object to them.

Q. Mr. Lowry, Mr. Baldwin has called my attention to certain pencil markings—pencil mark figures in the manifest of the *Santa Ursula* which is put in evidence as Exhibit 25; do you know whose they are? A. I do not.

Q. Did you take account of them in making your calculations? A. I did not.

Q. You ignored them? A. Yes.

MR. BALDWIN: It is noted that the lead pencil 5924
memoranda in both of Defendants' Exhibits 24 and 25 are not included in the offer.

CROSS-EXAMINATION by Mr. Kirlin:

Q. Did you state why it was that you picked out this particular ship and manifest as the basis of your comparison? A. I did.

Q. What is it; I have forgotten? A. It was those were the only ones that had the footings for the weight and measurement on the manifests.

5925 MR. BALDWIN: Of all that you examined?
THE WITNESS: Of all that I examined.

Q. It so happens that this one that you have selected was bound to ports that carried by direct shipment at much higher rates than Rio and Santos?

MR. MONTGOMERY: Which one are you referring to?

MR. KIRLIN: The *Numantia.*

5926 A. In the other case, of the *Santa Ursula,* where the higher rate of 60c——

Q. Keep to one at a time. I want to ask a few questions about this one; do you know how much water there is off the Port of Rio Grande do Sul? A. I could not say now.

Q. You know in a general way it has a bar? A. I know it has a bar that is restricted by the depth of water there.

Q. What is your knowledge or information about it? A. Last time I had occasion to investigate it there was fourteen feet on the bar; that was in 1904.

5927 Q. Isn't that an unusual depth of water at that port? Isn't it about twelve or thirteen feet according to your best present information? A. No; the figures were furnished me by Mr. E. H. Corthell, who was at that time in charge of the harbor work there.

Q. At present have you any information about it? A. At present I have no information.

Q. A ship the size of the *Numantia* going to that place would have to take a chance of being able to get across, of course? A. Undoubtedly.

Q. Would a vessel carrying a cargo of rails going to a
5928 port like that lay outside on her own time, or would she count her days from the time she got off the bar? A. Count her days from the time she got off the bar.

Q. And lighterage as well? A. Yes.

Q. Paid by the cargo? A. The lighterage in that port would probably be for the consignee.

Q. So then there is another difference in the comparisons here in that the *Numantia,* if she had to wait, would wait on her own time, whereas the rail vessels would wait on the cargoes' time, and if she had to lighter the vessel out she would lighter at the cargo's expense, while there is no provision

here for any lighterage charges with relation to the cargo for that port? A. That may be the case, but it is presumable that a vessel carrying rails to Rio Grande do Sul as well as carrying to a number of ports before arriving there would have discharged enough rails previous to arriving at Rio Grande do Sul to go across the bar. 5929

Q. And, of course, a vessel could not be hired to take rails to Rio Grande do Sul at the same rate that you have used there, namely, the Santos rate in your comparison? A. And, therefore, could not compete with the lines.

MR. BALDWIN: Move to strike it out. 5930

Q. Answer the question first and draw your inferences afterwards? A. Yes.

Q. Do you want to leave your argument there? A. That is not an argument; that is a statement of fact.

Q. Mr. Lowry, you said the manifest on the *Numantia* showed the measurement of the rails, rails and accessories; the only item on this manifest in which there is any measurement of rails is the following, is it not? 94 pieces of rails, 28,600 pounds of accessories, total weight 1,582,155 pounds; measurement 12,678 feet? A. Cubic feet? 5931

Q. Yes, cubic feet; that is so, isn't it? A. That is so, and that is the same item which appears verbatim in Exhibit 325.

Q. A very, very small proportion of that represents measurement of rails? A. Of course, it is really a measurement of the contents, rails and accessories as stated.

Q. Yes, but practically it is a measurement of the bundles of accessories, of which there is 28,600 as against 94 rails? A. And that is the case, and therefore, the rate evolved is much less per cubic foot than it would have been if there had been more rails and fewer accessories. 5932

Q. When you compared the cargo of rails with the cargo of rails and accessories and assumed that the cargo of rails would occupy a certain number of cubic feet did you base your assumption on that item? A. I used exactly the same——

Q. Did you or didn't you? A. I used the same figures.

Q. Did you base it on that item? A. I have already stated that that item appears verbatim in the exhibit.

Q. I don't care where it is; did you base your computation on that item? You cay say yes or no to that, can't [illegible]? A. I did.

5933 Q. Then say so? A. But I have already answered it.

MR. MONTGOMERY: There is a mistake in Exhibit 325, on the second page, where appears the following: "Revenue on 4,758 tons of rails at $8.40 per cubic foot, $39,967.20." It is very evident that that is intended to be in place of $8.40 per cubic foot, $8.40 per ton. The computation will show that. That is an error in putting down cubic feet instead of tons.

(Original exhibit changed accordingly.)

5934

Q. Do you remember when you were on the stand before you testified about the operations of the Pan-American Mail Company? A. I don't know as I remember the official name of it, but that is the name it is commonly known as, the Pan-American Mail Company.

Q. I asked you to produce certain information about the expenses incident to the operation of the ships of the line? A. You did.

Q. Have you ever been able to get that for me? A. No.
5935 I have written I think four or five letters to Mr. J. W. Porch, who is the president of the company, and who has in his custody the papers that I wanted. When I promised to furnish these I was a witness here and was under the impression that I would leave for New Orleans almost immediately, and having in view that I was going to New Orleans I promised that I would furnish these documents.

Q. The upshot of it all is, I suppose, we are not going to get them? A. As far as I know it will be impossible for me to get them from Mr. Porch. However, I have refreshed my recollection a little on a number of the ques-
5936 tions that were asked me from memoranda which I had in my possession and I could probably give you some of the information that you want.

MR. SPOONER: What we want to know is whether the information you gave before is correct?

THE WITNESS: That depends a good deal on the intelligence of the gentleman who passes on it and the information which he possesses.

RE-DIRECT EXAMINATION by Mr. Baldwin:

Q. Did you also write to Mr. Farrar, the counsel? A.

Yes, requesting him to use his good offices with Mr. Porch 5937
to furnish me this information. The letter which I received from Mr. Farrar I have here.

Q. Now, Mr. Lowry, you take this Defendants' Exhibit 25, which is the manifest of the *Santa Ursula;* on the first page of that exhibit there is a column here which is entitled "Conditional landing charge," and the total of it is $675.48? A. Yes.

Q. Opposite the word "Rio de Janeiro," and then there is no figures whatsoever opposite the word "Santos"? A. Yes. 5938

Q. From that you inferred that there were no landing charges at Santos? A. That is the case.

Q. At least, none were charged? A. No.

Q. Now, on the pages which follow under the same caption, "Conditional landing charges," we find the specific charges for each particular item of cargo, do we not? A. That is the case.

Q. That is, on each page, so that it appears upon the first page is the total of the specific items of conditional landing charged which appears on the other pages, is that right? A. That is the case. 5939

Q. Now, the total then is the same which from the manifest you infer they collected? A. That is my understanding.

Q. And you include that in your comparison involved in the total revenue of the ship? A. I do.

Q. For that outward voyage? A. I do.

Q. Now, on Defendants' Exhibit 24 under the head "Conditional landing charges" there is no entry whatsoever, is there, on the total, and none on the sheets that follow—this is Exhibit 24 of the *Numantia*—and under the 5940
caption "Conditional landing charges" on the first page I find no entry whatsoever of the charge; that is right, isn't it? A. Yes, that is the case.

Q. Now, this is a ship that went to eight ports? A. That is the ship that visited a number of ports.

Q. So that in the conditional landing charges in making up the total receipts of the ship from all sources you do not include conditional landing charges, do you? A. Very probably that is included in the total for Rio.

Q. Opposite the word "Rio de Janeiro," if you will notice, there is no conditional landing charges on that ship at all? A. Not on the recapitulation sheet.

5941 Q. But you do find that on the Rio de Janeiro sheet, that there are conditional landing charges? A. I do.

Q. And in those conditional landing charges you find $463.96? A. That is it.

Q. But on the first page of Defendants' Exhibit 24, opposite the word "Rio de Janeiro," they have not included the conditional landing charges? A. They have not included them as a segregation.

Q. But when you came to make up your total receipts of the ship you did include it? A. I included it.

5942 MR. KIRLIN: You included that for all the ports in which there was any entry?

Q. In the port for which there was a conditional landing charge? A. Yes, that is the fact.

Q. Now, referring to Exhibit 325 prepared by you, what did you find was the average rate charged per ton as you worked it out on the *Numantia*, which called at eight ports? A. The average rate per ton is not shown in there.

Q. What is that $6.60 there? A. That is the rate
5943 charged on that shipment of rails.

Q. What did you find the rate charged on the rails on the *Santa Ursula?* A. $8.40.

Q. And that ship called at only two ports? A. Only called at two ports and the rails went to the same port, in one instance at $6.50 and the other at $8.40.

Q. Will you take these two manifests and turn to whichever one contains the fact with reference to the 1,300 feet of steel rails? A. Not steel rails.

Q. 1,300 feet of cargo transshipped; on what ship was that, the *Numantia*? A. On the *Numantia* I think.

5944 MR. MONTGOMERY: To Pelotas via Rio Grande do Sul.

Q. Mr. Lowry, in response to a question of Mr. Burlingham's I think it was, you stated that the amount of cargo transshipped for Pelotas amounted to about 1,300 cubic feet, is that correct? A. No, that is the amount of measurement cargo which went there. The measurement of the total cargo, both weight and measurement cargo, was 3,780 or a little less than a hundred tons.

Q. Now, Mr. Lowry, if you were to show a comparison of a steamship carrying rails to all of the ports would the

12c per foot which you worked out be a return to the steamship? A. It would. 5945

Q. What is meant by the term "heavy lifts" that was used here and also appears upon those manifests; just explain that? A. Excess charges charged by the line for lifting pieces of exceptional weight, ranging I think it is three tons and up.

Q. Where the rails that were put over by the ship that you were interrogated about a little while ago, what effect does that have upon the net return to the ship where they are put directly over to the consignees without any lightering charges to the vessel? A. The ship has the advantage of not having to pay any lighterage. 5946

Q. Now, in the case of these two ships whose manifests you have examined, wherever the lighterage charges are in any way charged you have included it? A. I have.

Q. For any commodity? A. I have.

Q. At least where it appears there? A. I have.

Q. Mr. Kirlin started to ask you a question, what was the advantage of these comparisons, and you started to make some answer; I don't know what it was but I will ask the question? A. It shows in cases where the cubic capacity of the vessel is the restrictive factor in loading that the rate obtained on very dense cargo, whether it be rails or pig iron or lead or anything else, is very much higher per cubic foot than a vessel which was restricted by its dead weight capacity could get. 5947

Q. Have you anything further to add to that? A. No.

By Mr. Montgomery:

Q. In this shipment of rails and accessories grouped together, both for the *Santa Ursula* and on the *Numantia* in these exhibits, is the proportion of rails to acessories in those two items about the same proportion in which rails and accessories should move? A. No. 5948

Q. Why, what is the difference from the usual proportion? A. In fact the weight of accessories is very much greater in proportion than the weight of rails.

Mr. Baldwin: In what particular case are you speaking about now?

The Witness: In the case of the *Numantia.*

Q. How is it on the *Santa Ursula,* where they have 45

5949 rails and fittings stowing in a little less than 14 cubic feet, can you tell from that bill of lading entry how the proportion of rails to fittings is? A. There is no data from which to arrive at the proportion of accessories to the number of rails.

Q. In the case of the *Santa Ursula?* A. Yes.

Q. But in the case of the *Numantia* there is? A. They are specified.

Q. And you say, as I understand it, that the weight of the accessories is much greater in proportion than would
5950 ordinarily obtain in a shipment of rails and accessories? A. That is the case.

Q. Then I take it that the measurement of the accessories, the relative measure of the accessories, to the rails would be considerably greater in the case of the *Numantia* than there would in the average case of a shipment of rails and accessories? A. That is the case.

Q. So that the net result would be that whereas these rails and accessories stowed in 18 cubic feet to the ton or a little less, the general average shipment of rails or accessories would stow how? A. Would stow much less, proba-
5951 bly about 15.

Q. And that would result, then, in a steamer obtaining per cubic foot about 18/15 as much as she obtained on this cargo, wouldn't it, on the average shipment of rails? A. About 15/18.

Q. No; if it stowed smaller the revenue would be greater per cubic foot? A. That is it.

Q. In the relation that 18 is to 15? A. That is it.

Q. So that the discrepancy between the revenue per cubic foot would be—between the *Numantia* and the hypo-
5952 thetical tramp—would be greater? A. That is the case.

RE-CROSS EXAMINATION by Mr. Burlingham:

Q. What do you say the normal shipment of accessories is with a cargo of rails in tons? A. That I could not say; but I can say about how it will stow; about 15 cubic feet to the weight ton generally, depending on the rails.

MR. MONTGOMERY: Do you mean rails and accessories?

THE WITNESS: Rails and accessories.

Q. You heard Mr. Farrell testify the other day to the

effect that with the rails they shipped bolts and all sorts of things? A. I did. 5953

Q. But you do not know yourself what the weight or cubic contents relatively of the rails themselves and the accessories are? A. No, except that I know the accessories stow much bigger than the rails.

RE-CROSS EXAMINATION by Mr. Kirlin:

Q. You emphasized for some reason or other that there was a difference in the price of the rails which you say went to the same port on the *Numantia* than on the *Santa Ursula;* will you look at the figures and see whether the proportion of the dead and of the cubic of those two shipments, how they compared? A. One is much smaller than the other. 5954

Q. Which is very much smaller? A. The *Santa Ursula.* The shipment by the *Santa Ursula* was much smaller than the shipment by the *Numantia.*

Q. How did the dead weight compare with the cubic measurement? A. The dead weight in the case of the *Numantia* was less to the cubic measurement than in the case of the *Santa Ursula.* 5955

Q. That is an equal per ton of the *Santa Ursula* shipment occupied more space? A. No, I think the *Santa Ursula* shipment would have occupied less space. Would have stowed in a less number of cubic feet than the *Numantia.*

Q. Does that appear on the statement? A. By making a comparison between the two statements you can readily arrive at it.

MR. MONTGOMERY: Are you talking about the whole cargo, Mr. Kirlin, or about the rails? 5956

MR. KIRLIN: I am talking about the rails and accessories, put down in one case at $6.60 a ton and in the other case rails and fittings——

Q. It apears in the manifest that there are different kinds of rails and fittings, does it not? A. It does not appear on the manifest.

Q. One street railway material and the other apparently a railway? A. That does not show on the manifest. You might infer that.

Q. Does it not appear that the shipment was consigned

5957 to the Sao Paulo Tramway Light & Power Company, Limited on the *Santa Ursula?* A. It appears that they are the shippers.

Q. No, that is not the question I asked; I asked whether it did not appear it was consigned to them? A. It appears that they are both shippers and consignees.

MR. MONTGOMERY: About this Exhibit 319 for identification which you were going to let us know whether you would object to our putting it in, it is a compilation of percentage increase of rates as
5958 shown by Mr. Farrell's testimony?

MR. BURLINGHAM: Did Mr. Farrell make that?

MR. MONTGOMERY: No, I made it.

MR. BALDWIN: The question is whether you are willing to take it for what it is worth. We offer it in evidence.

MR. SPOONER: I object to it as incompetent and immaterial.

MR. BALDWIN: Then I will call Mr. Montgomery to prove it.

5959

STANLEY D. MONTGOMERY, called on behalf of the Petitioner, being first sworn, testified as follows:

DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Montgomery, have you made up a compilation based upon the testimony of the witness Farrell, who was on the stand previously to show the increase of rates which the conference lines had charged the Steel Company for
5960 the carriage of barb wire to the different ports? A. I did.

Q. Is this the compilation? (Showing witness paper.) Exhibit 319 for identification? A. Yes.

Q. Correctly made? A. Yes.

MR. BALDWIN: I offer it.

MR. SPOONER: Same objection.

Received as Petitioner's Exhibit 319.

MR. MONTGOMERY: I want to offer the minutes of the New York Conference of June 23rd, 1909, June 30th, 1909, July 7th, 1909, July 14th, 1909, July 21st, 1909, July 28th, 1909. There appear to be no minutes for August 4th. Also minutes of August 11th,

1909, August 17th, 1909, August 25th, 1909, September 1st, 1909 and September 3rd, 1909. 5961

Minutes of June 23rd, 1909, on page 30 of the minute book, marked Petitioner's Exhibit 327½.

Minutes of June 30th, 1909, on page 34 of the minute book, marked Petitioner's Exhibit 328.

Minute of July 7th, 1909, on page 41 of the minute book, marked Petitioner's Exhibit 329.

Minutes of July 14th, 1909, on page 42 of the minute book, marked Petitioner's Exhibit 330.

Minutes of July 21st, 1909, on page 44 of the minute book, marked Petitioner's Exhibit 331. 5962

Minutes of July 28th, 1909, on page 47 of the minute book, marked Petitioner's Exhibit 332.

Minutes of August 11th, 1909, on page 52 of the minute book, marked Petitioner's Exhibit 333.

Minutes of August 17th, 1909, on page 54 of the minute book, marked Petitioner's Exhibit 334.

Minutes of August 25th, 1909, on page 60 of the minute book, marked Petitioner's Exhibit 335.

Minutes of September 1st, 1909, on page 61 of the minute book, marked Petitioner's Exhibit 336. 5963

Minutes of September 3rd, 1909, on page 63 of the minute book, marked Petitioner's Exhibit 337.

MR. MONTGOMERY: I also offer in evidence minutes for January 12th, 1910 and January 26th, 1910.

Minutes of January 12th, 1910, on page 107 of the minute book, marked Petitioner's Exhibit 338.

Minutes of January 26th, 1910, on page 114 of the minute book, marked Petitioner's Exhibit 339.

MR. SPOONER: What is the object of these, Mr. Montgomery? 5964

MR. MONTGOMERY: I don't know that we care to state what the object is.

MR. SPOONER: The evidence heretofore has shown a record was made.

MR. MONTGOMERY: Yes.

MR. BALDWIN: It couples up certain evidence that is already in.

MR. KIRLIN: The defendants object to each and every one of the entries referred to as immaterial, irrelevant and incompetent.

MR. MONTGOMERY: That book has never been

5965 proven and we will get one of your people up here and put them in if you want us to.

MR. BALDWIN: Do you object to them upon the ground that the book has not been proven or seems to be conference minutes kept?

MR. KIRLIN: I supposed it had been proven.

MR. BALDWIN: I supposed it had been, but if not we will have to subpoena the witnesses to prove them.

MR. KIRLIN: I am not questioning the authenticity
5966 of the minutes.

MR. BALDWIN: Simply the materiality or competency?

MR. KIRLIN: Not competent in a legal sense to prove anything.

MR. BALDWIN: It simply goes to the competency or relevancy or materiality of the issue?

MR. KIRLIN: Yes, as to the competency or materiality of the facts.

MR. MONTGOMERY: I want to offer in evidence Exhibit 155 for identification, a letter from Lamport &
5967 Holt to Busk & Daniels dated August 17th, 1909; also Exhibit 156 for identification.

MR. KIRLIN: We object as immaterial and irrelevant.

Received as Petitioner's Exhibit 155 and 156.

MR. MONTGOMERY: I offer in evidence Exhibit 109 for identification.

MR. KIRLIN: We object as immaterial, irrelevant and incompetent.

MR. BALDWIN: For the purpose of showing the his-
5968 tory of these conferences in the making of rates.

Received as Petitioner's Exhibit 109.

Recess taken until two o'clock P. M.

AFTERNOON SESSION. 5969

MR. BALDWIN: We have here a copy of the conference agreement as it existed in 1906.

MR. KIRLIN: Who knows that is the way it was in 1906?

MR. BALDWIN: That is the question. Mr. Gottheil can state whether it is or not.

MR. KIRLIN: If he knows it, he knows more than I do. Here he is.

Mr. BALDWIN: This was produced before the Grand Jury under subpoena when they had the Grand Jury hearing. What is your attitude about that? Are you willing to let it go in reserving your objection as to its competency, relevancy or materiality to the issue, or do you object upon the ground that we have not proved the foundation to make it admissible or—— 5970

MR. KIRLIN: I think in view of the fact that you are suing upon specific agreement that we have to make every objection we can.

MR. SPOONER: I think so. 5971

MR. BALDWIN: Then I will have it marked for identification.

Marked Petitioner's Exhibit 327 for identification.

MR. MONTGOMERY: We offer in evidence Exhibits 118 and 119 for identification.

MR. KIRLIN: We object to them on the ground that whatever was done in Santos and Rio is outside of the scope of the issues, immaterial, irrelevant and incompetent.

Received as Petitioner's Exhibits 118 and 119. 5972

LORENZO DANIELS, recalled.

DIRECT EXAMINATION by Mr. Baldwin:

Q. Mr. Daniels, I show you Exhibit 327 for identification, can you state whether or not that that is a copy of the conference agreement between the Lamport & Holt Line and the other lines mentioned on the head lines there entered into in 1906? A. May I ask if this is furnished by our office?

Q. This was furnished to the United States Attorney before the Grand Jury either by your office or somebody

5973 else? A. Without being personally familiar with it, if it was furnished by our office I accept it.

Q. I do not want to mislead you at all, Mr. Daniels: I ask you now—you were interrogated somewhat about the conditions of the—that is, not the conditions, but as to the existence of conference before 1908 when you were on the stand before. Now, I am showing you this and ask you whether or not that that is a copy of the conference agreement that was entered into between the lines that appear in the title there in 1906? A. Personally I cannot
5974 answer; but if it is one of the records out of our office I am willing to accept it.

Q. Do you recall whether or not that you were subpoenaed to produce that before the Grand Jury? A. I could not recall.

Q. What is your best recollection? A. In the sequence of events if we produced it I am willing to accept it.

Q. What is your best recollection? A. I really have nothing to guide me, but if we furnished it I accept it as correct. Won't that answer?

Q. It doesn't answer, because the ones that were before
5975 the Grand Jury are not here and are not in a position to make that statement, Mr. Daniels, I don't know. I only have a general knowledge of the fact that subpoena *duces tecum* was served upon all of the conference lines' agents here to produce before the Grand Jury certain evidence; that paper that you have in your hand was turned over to us by the United States District Attorney as produced, and whether it was actually produced before the Grand Jury or presented to the District Attorney we do not know, nor do we know who produced it. A. My impres-
5976 sion is these were all produced by the secretary of the conference at the time; that the Assistant District Attorney came down with our attorney and took what papers he wanted; it is presumably one of them and if it is so I am perfectly willing to identify it. I have no way of recollecting.

Q. You remember in a general way, don't you, the nature of the provisions of the conference agreement? A. In a general way, and this I believe is correct.

Q. You think it is correct? A. I think so.

Q. Do you know where the original of this is? A. No, I do not.

Q. You are familiar enough with this New York confer- 5977
ence here to know whether the original was kept there or not, do you not, Mr. Daniels? A. I don't think I have ever seen the original.

Q. You never saw the original? A. I don't think so.

Q. But you knew the copies were kept there? A. We had copies there, or abstracts.

Q. For the information of those who were members of the conference? A. I presume so, yes.

Q. Your best understanding of this is that this is a copy of that agreement that was entered into at about 5978
that time? A. I should so infer, yes.

MR. BALDWIN: Now I offer it in evidence.

MR. KIRLIN: We renew our objection.

MR. SPOONER: Objected to on the ground of not proven to be a copy by competent evidence, and sufficient evidence; secondly that it is irrelevant and incompetent as not being within the issues made by the pleadings.

Received as Petitioner's Exhibit 327.

5979

Q. Do you know where the original of this agreement of 1906 you are now testifying about was kept? A. I do not.

Q. Don't you know as a matter of fact the original was kept at the office of the principals of the company on the other side? A. I don't know from my own knowledge.

Q. What is your general idea about it?

MR. BURLINGHAM: I object to his general idea.

A. It is simply a surmise; I have no absolute knowl- 5980
edge.

Q. You have no recollection of ever having seen the original here? A No, I have no recollection.

HENRY F. MCCREARY, recalled.

DIRECT EXAMINATION by Mr. Montgomery:

Q. Mr. McCreary, you recall testifying here last winter with regard to the shipments of coffee from Brazil? A. Yes.

Q. And do you remember we had here some circulars,

5981 some of them in the form of notices to shippers, which you testified to? A. Yes.

Q. In some manner the Exhibit 120 for identification, which was one that you testified in regard to, has been lost or mislaid, and I ask you to look at this copy, this Exhibit 200, and tell me whether that is a copy of the circular relating to your shipments from Rio de Janeiro and Victoria to the United States? A. (After examination of paper.) Have you got any of the others?

Q. Yes? A. Will you let me see them please? I
5982 am satisfied this is, but I want to see the date.

Q. There are I think, copies, Exhibits 11, 12 and 13? A. That is it. (After examination of papers.)

Q. That is the copy of the circular notice which was sent to you by the conference lines, or by some of them? A. Sent to Hard-Rand & Company.

Q. To Hard-Rand & Company or Hard & Rand? A. Hard, Rand & Company.

Q. In Rio? A. In Rio.

Q. And by them sent to you? A. Yes, sir.

Q. And it was never executed, was it, as far as you
5983 know? A. No.

Q. It was treated as a notice? A. That is all; information on what terms we would get rebate.

Q. And your rebates were paid in accordance with the terms of that, weren't they? A. Yes, sir.

Q. In testifying last winter when Exhibit 120 for identification, the one that was mislaid or lost, was shown to you, I asked you what that was and your testimony reads as follows, on page 229: "Q. I call your attention to this paper marked 'Memorandum of Agreement' and ask you
5984 what it is?" The answer is: "It looks like an agreement between the steamship companies and the shippers in Santos." Now, I ask you, Mr. McCreery, whether—— A. I could hardly have said that of that because that is Rio.

Q. I ask you whether there was ever a notice or circular or other paper that you recall relating to Santos business that was entitled "Memorandum of Agreement" A. I think that was the title, yes.

Q. Of the Santos one? A. Yes. I don't know what the title was, but there was a notice to shippers.

Q. I am referring to the title now; I will ask you to look

at this to refresh your recollection, Exhibits 11, 12 and 13, 5985
carefully, and then tell me whether you can state whether any circular under which you have done business from Santos was entitled "Memorandum of Agreement"? A. No, I could not tell you that. I think it was all notices to shippers.

Q. You think those relating to Santos were all entitled "Notice to Shippers"? A. Yes, and before that one.

Q. This "Memorandum of Agreement" Rio and Victoria? A. I don't know why it was named differently, or the title different. 5986

Q. Do you remember more than one in the form of a memorandum of agreement? A. No, I did not know that was called memorandum of agreement until you called my attention to it.

Q. But you are certain that is the one you testified about? A. I know it is the one we were working under.

Cross-Examination by Mr. Kirlin:

Q. The question is, Mr. McCreery, whether you did not have one exactly like that relating to Santos when you 5987
were here before? A. No, I think not. I think we had only notices to shippers.

Q. And according to your testimony he showed you a paper which was entitled just like that? A. Yes.

Q. And asked you to look at it and see what it was and you looked at it and said it looks like an agreement relating to Santos. Now, he has mislaid the agreement and the question that has come up here is whether the one that was lost is identical with this one—just take that before you—or whether there was a similar one to that relating 5988
to Santos? A. No, the Rio one was never the same as Santos.

Q. You see in this paper he has shown you notices regarding shippers to Rio as well as notices to shippers at Santos; there is one notice to shippers Rio and Victoria; you had notices to shippers at both places—— A. One is 1908 and this is 1909. I don't know why it should be worded differently. The terms are just the same, are they not? Of course, the terms in Santos and Rio are not the same.

Q. The question is whether you have a sufficient recol-

5989 lection now to overcome what you said about it a year ago when you looked at it, that it is an agreement relating to Santos? A. An agreement relating to Santos?

Q. Yes? What you said? A. No, I could not testify on that. These two are dated 1908 and this is 1909; it is possible, of course, there was the same kind of memorandum of agreement in 1909.

Q. It is possible there was one the same as Exhibit 200 relating to Santos? A. Yes, if I gave that evidence before.

5990

RE-DIRECT EXAMINATION by Mr. Montgomery:

Q. I show you Exhibit 118 entitled "Notice to Shippers From Santos," dated July 15th, 1908, and ask you if that is not still in effect? A. No, I think not. I think there was some change in the 1909 one; this rebate is only payable at the end of six months and my belief now is that it is payable at the end of three months.

Q. Yes, but wasn't that brought to your attention in a supplementary notice? A. I think it was the following
5991 year, 1909, but I could not tell. You see this thing is all arranged down in Rio and Santos, not here.

Q. I call your attention to Exhibit 123 entitled "Supplementary Notice to Shippers From Santos" and appears to be dated the 11th of September, 1908, and also to Exhibit 124 which is also entitled "Supplementary Notice to Shippers from Santos," dated Santos, September 1st, 1909, and asked you if Exhibit 118, Exhibit 123, and Exhibit 124—Exhibit 118 as modified by Exhibits 123 and 124—is not in effect now and has been since issued except
5992 as so modified? A. Yes, that is what we are working under, but the lines are not living up to it.

Q. They are not? A. No.

Q. How is that; in what respect? A. Because they are charging us 50c when we have been able to charter at 35c.

Q. What I meant by their being in force, Mr. McCreary, was whether they had been supplemented by any subsequent notice or anything? A. I am not sure that something does not pass every year; but there is no change in there as far as I know. I only know that the lines—we have offered them steamers at 25c—we have offered freight to them at 25c and they adhere to 50c and we can

do nothing because they are wise enough to have made 5993
Europe and the United States together.

Q. What do you mean by that? A. We would lose our rebates to Europe if we shipped by another line to the United States. If it had not been for that smartness on the part of those people there the rate of freight to the United States would not be over 25c or 30c.

Q. What do you mean by smartness, Mr. McCreary? A. In making the rebates to Europe and the United States one. We are unwilling to sacrifice our rebate to Europe in order to cheapen our freight to the United States. Our 5994
European business is more important than the business to the United States.

Q. You mean larger in volume I suppose? A. Yes, the the rebates are more.

Q. Now, Mr. McCreary, go back to this, are you able to say from looking at these exhibits whether or not there was ever a notice or circular under which you operated from Santos in form of a Memorandum of Agreement or entitled "Memorandum of Agreement"? A. No, I should think there was not because this one distinctly refers to it 5995
as a notice to shippers.

Q. And you think those Exhibits 118, 123 and 124 cover all that you have had from Santos since 1908? A. I should think so, yes, because, you see, we would have been notified if there had been any change.

Q. I notice that when you testified in regard to this exhibit, that is the last Exhibit, 120, that I asked you this question: "The date blank 1909 is the date of the agreement on the second page," and you said: "A. That is right," at page 235 of the record. Now, from looking at these Exhibits 118, 123 and 124, are you able to say 5996
whether or not in 1909 there was an agreement relating to Santos in addition to this? A. I could not tell you.

Q. I call your attention to the fact—— A. This is 1909 and, of course, there might have been a printed one like that. (Indicating Exhibit 200.) If you will call up my office, 5395 Broad, I will ask Mr. Waddell if he has any on file there.

Q. Mr. Waddell has been examined about it and I am very sure—— A. He has charge of them all. I would not know where to lay my hands on anything.

**Q. I call your attention to the fact that this second Sup-**

5997 plementary Notice to Shippers, Exhibit 124, is dated September 1st, 1909. Now, having refreshed your recollection by that date, can you say whether or not those were the only ones relating to the Santos business that you had in 1909? A. I can only say that I believe it is the only one we had.

RE-CROSS EXAMINATION by Mr. Kirlin:

Q. Just look at the terms of this one, Exhibit 200, and say whether that other one—glance over it and see in a
5998 general way what the purport of it is, and say whether there was not an agreement about the same time embodying those terms with relation to Santos? A. Santos agreement is always different from Rio. We had more right under the Santos.

Q. When Exhibit 120 was shown to you you were asked to look at it, and you replied that it appeared to be an agreement relating to Santos, and the question is whether you have any information to-day which leads you to think that you made a mistake in saying last winter that the
5999 agreement that was shown to you related to Santos? A. I don't see it here. That is the only thing. It is all called Supplementary Notices to Shippers.

Q. A paper was shown to you which you were asked to look at and say what it was, and you said it appeared to be an agreement relating to Santos? A. Yes.

Q. Now, the question is whether you have any reason to-day to doubt that what you said last winter was true? A. None whatever, because the notice to shippers would be a memorandum of agreement. The title is different, but it would be just the same; the purport of it is a memo-
6000 randum of agreement.

Q. You make shipments from Brazil to ports in Europe as well New York, do you? A. Yes.

Q. How do freight rates to Europe compare with freight rates here?

MR. BALDWIN: Objected to as immaterial and incompetent, and not bearing on any question asked on direct.

A. Freight rates are 45 shillings from Santos.

Q. 45 shillings on what? A. 45 shillings per ton.

Q. From Santos to where? A. From Santos to Ham- 6001
burg and Holland; different rates at different ports.

Q. What are they from Santos to here? A. Santos to here 50c a bag.

Q. A sack? A. Yes.

Q. How many sacks to the ton? A. 17 we figure.

Q. How does it work out? A. It works out Europe is 50c a hundred pounds and the United States 40c a hundred pounds.

By Mr. Montgomery: 6002

Q. You get a 5c additional rebate from Europe, don't you? A. No; we get the same rebate, 10%.

Q. Under that supplementary notice don't you get an additional 5%? A. Yes, there is an additional 5% for something, I forget just what it is.

Q. Exhibit 124, I ask you to look at that and state whether or not there is not a five cent additional rebate on European shipments from Santos? (No answer.)

By Mr. Kirlin: 6003

Q. Perhaps you can state, Mr. McCreary, whether the figures you gave were the net figures? A. No, none of them. They are both subject to rebate.

Q. Any more or less rebate in one trade than in the other? A. The regular rebate is 10% to both places, but there may be a supplementary rebate here.

Q. If there was another 5% rebate, as to which you do not seem to be able to answer right off hand, it would still mean it was five cents lower here than in Europe? A. It would be more than that if it was 5%. If there was only 5% additional—— 6004

Q. This would be more than 5%? A. That is the difference would be more, but I suppose the distance to Hamburg is about 50% more than to New York. A steamer will come up here in 17 days and I suppose to Hamburg—I am not posted on it,—but I suppose to Hamburg it would be 23 or 24 days.

Q. You are quite wrong in saying the distance was 50% more, aren't you? A. I didn't say 50%; I said I supposed it would be about 50%; you can find that out by looking at the map; perhaps it is only 25% more.

6005 By Mr. Montgomery:

Q. You do not recall your testimony in regard to this last winter, do you, Mr. McCreary? A. No.

Q. To refresh your recollection I will read the question and answer: "I call your attention to this paper marked 'Memorandum of Agreement' and ask you what that is?" The answer is: "It looks like an agreement between the steamship companies and the shippers in Santos." Do you recollect whether in making that answer that was made before you had examined the paper? You said it
6006 looks like it? A. I don't know, but I should presume it was after examining it.

Q. You remember the paper was handed to you and you said it looks like it? A. Yes. I do not suppose I should have given the evidence if the paper was not before me.

Hearing adjourned to Thursday, October 23rd, 1913 at 10:30 o'clock A. M.

6007 NEW YORK, October 23rd, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. SPOONER & COTTON, by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles C. Burlingham, Esq., for Frederick T.
6008 Busk, *et al.*

MR. BALDWIN: In pursuance to the offer made by the Government of Exhibit 327 for identification, and in pursuance of the testimony of Mr. Daniels in reference thereto, and pursuant to the statement of counsel that it will not be necessary to subpoena the respective defendants *duces tecum*, to produce the original or a copy of the said Exhibit 327 for identification, that they would ascertain whether the respective defendants have the original or a copy, I am authorized by Mr. Kirlin, representing the Prince Line and Paul F. Gerhard & Company that they neither have the original nor a copy thereof

MR. BURLINGHAM: I make the same statement in behalf 6009
of Messrs. Busk & Daniels—I am authorized to state by Mr. Daniels that he has made search as requested by the Government's attorney for the original or a copy of Petitioner's Exhibit 327 for identification and that he has been unable to find the same.

MR. BALDWIN: While the Hamburg-American Line and the Hamburg-South American Line are not parties to Exhibits 327 for identification they were requested likewise to produce the original or a copy if they have the same, but Funch, Edye & Company having been agents for the Union 6010
Line, parties to said agreement, if the counsel for the Hamburg-American Line desire to state what they have found we would like to have it on the record.

MR. SPOONER: In answer to that question put to Mr. Gottheil the day before yesterday by Mr. Baldwin, he stated that Funch, Edye & Company neither had the original nor a copy.

MR. BALDWIN: In view of the statement made by the respective defendants called upon to produce the said original or a copy of the said agreement, I now renew the offer 6011
of this agreement. I offer it letting the same objection stand that was made to the first offer.

MR. SPOONER: Subject to the first objections incorporated in the record to its admissibility when previously offered herein?

MR. BALDWIN: Yes.

Hearing adjourned to Monday, October 27, 1913, at 10:30 A. M.

NEW YORK, October 27, 1913. 6012

Hearing resumed pursuant to adjournment.

APPEARANCES:

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. SPOONER & COTTON, by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

MESSRS. CONVERS & KIRLIN, by Mr. M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles C. Burlingham, Esq., for Frederick T

6013 Counsel for defendants having stated that their clients had not yet completed checking up the statement submitted by counsel for the Petitioner at the last hearing, and having asked more time in which to do so the Commissioner ordered the hearing adjourned to Tuesday, October 28th, 1913 at 2 o'clock P. M.

NEW YORK, October 28, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

6014

ERNEST E. BALDWIN, Esq., STANLEY D. MONTGOMERY, Esq., for the Petitioner.

MESSRS. SPOONER & COTTON, by J. C. Spooner, Esq., for Paul Gottheil, *et al.*

MESSRS. CONVERS & KIRLIN, by Mr. M. W. Maclay, Jr., Esq., for Prince Line, *et al.*

MESSRS. BURLINGHAM, MONTGOMERY & BEECHER, by Charles C. Burlingham, Esq., for Frederick T. Busk, *et al.*

6015 MR. MONTGOMERY: We offer in evidence Exhibit 93 for identification, letter from Busk & Daniels to Lamport & Holt, dated July 9th, 1909.

MR. BURLINGHAM: We object to it as immaterial, irrelevant and incompetent; we further object to it on the ground that it is not within the scope of the issues raised.

MR. BALDWIN: You do not object to it as it not being the original?

MR. BURLINGHAM: No, we do not object to it on
6016 that ground.

Received in evidence as Petitioner's Exhibit 93.

MR. MONTGOMERY: We offer in evidence Exhibit 84 for identification, letter from Busk & Daniels to Lamport & Holt, dated March 5th, 1909.

MR. BURLINGHAM: I make the same objection.

Received in evidence as Petitioner's Exhibit 84.

MR. MONTGOMERY: I offer in evidence Exhibit 83 for identification, letter from Busk & Daniels to Lamport & Holt, dated February 26th, 1909.

MR. BURLINGHAM: We make the same objection.

MR. BALDWIN: You do not object to it because of the lack of signature?

MR. BURLINGHAM: No. 6017

Received in evidence as Petitioner's Exhibit 83.

MR. MONTGOMERY: We offer in evidence Exhibit 62 for identification, letter from Busk & Daniels, dated September 9th, 1908, addressed to Lamport & Holt, Liverpool.

MR. BURLINGHAM: Same objection.

Received in evidence as Petitioner's Exhibit 62.

MR. MONTGOMERY: We offer in evidence Exhibit 39 for identification, list of bonus claims produced in response to call 36 of the subpoena *duces tecum*, 6018 dated December 10th, 1912, and calling for "Copy of letter under date of February 7th, 1908 from Busk & Jevons or Busk & Daniels to Lamport & Holt containing list of persons who have bonus claims on the Brazil trade."

MR. BURLINGHAM: We make the same objection.

Received in evidence as Petitioner's Exhibit 39.

MR. MONTGOMERY: We offer in evidence Exhibit 49 for identification, letter from Busk & Jevons to Lamport & Holt, dated June 19th, 1908.

6019

MR. BURLINGHAM: Same objection.

Received in evidence as Petitioner's Exhibit 49.

MR. MONTGOMERY: We also offer in evidence Exhibit 43 for identification, letter dated August 30th, 1907, from Busk & Jevons to Lamport & Holt.

MR. BURLINGHAM: Same objection, and not within the scope of the issues raised by the pleadings.

Received in evidence as Petitioner's Exhibit 43.

MR. MONTGOMERY: We also offer in evidence Exhibit 36 for identification, letter of Busk & 6020 Jevons to James Knott, Esq., dated July 26th, 1907.

MR. BURLINGHAM: Same objection.

Received in evidence as Petitioner's Exhibit 36.

MR. MONTGOMERY: We also offer in evidence Exhibit 31 for identification, letter of Busk & Jevons to Lamport & Holt, dated October 12th, 1906.

MR. BURLINGHAM: We make the same objection.

Received in evidence as Petitioner's Exhibit 31.

MR. MONTGOMERY: We also offer in evidence Exhibit 142 for identification, letter of Busk & Jevons to Lamport & Holt, dated May 7th, 1908.

MR. BURLINGHAM: The same objection.

6021 Received in evidence as Petitioner's Exhibit 142.

MR. MONTGOMERY: We also offer in evidence Exhibit 24 for identification, letter of Busk & Jevons to Lamport & Holt, dated March 16th, 1906.

MR. BURLINGHAM: Same objection.

Received in evidence as Petitioner's Exhibit 24.

MR. MONTGOMERY: We also offer in evidence Exhibit 97 for identification, letter from Busk & Daniels to W. P. Plummer, Esq.

MR. BURLINGHAM: Same objection.

6022 Received in evidence as Petitioner's Exhibit 97.

MR. MONTGOMERY: We also offer in evidence the minutes of the New York conference dated October 21, 1908, pages 57, 58, 59, 60, 61 and 62.

MR. BURLINGHAM: We make the same objection.

Received in evidence as Petitioner's Exhibit 340.

MR. MONTGOMERY: Also the minutes of the same conference dated October 28th, 1908, pages 65, 66 and 67.

MR. BURLINGHAM: Same objection.

Received as Petitioner's Exhibit 341.

6023 MR. MONTGOMERY: Also offer in evidence Exhibit 98 for identification, which is correspondence between Busk & Daniels and the Baldwin Locomotive Works in regard to shipments to Brazil.

MR. BURLINGHAM: That has all expired too, hasn't it?

MR. MONTGOMERY: I believe it has.

MR. BURLINGHAM: We make the same objection.

Received in evidence as Petitioner's Exhibit 98.

MR. MONTGOMERY: We also offer in evidence

6024 Exhibit 14 for identification, which is a letter from Busk & Daniels to the Baldwin Locomotive works.

MR. BURLINGHAM: We make the same objection.

Received in evidence as Petitioner's Exhibit 14.

MR. MONTGOMERY: Mr. Burlingham, are you willing to stipulate that the firm of Busk & Daniels or Busk & Jevons, as agents of the Lamport & Holt Line, have throughout the period covered by this petition, collected the freight money on inward freight at New York from Brazil and distributed the cargo?

MR. BURLINGHAM: Yes.

MR. BALDWIN: The Government rests its case,

subject, however, to the right of the Petitioners to introduce at any time before the defendants open, statistics showing the amount of coffee carried into the Port of New Orleans by the conference lines and others embracing the years from July 1st, 1908 and ending June 30th, 1912; and also to put in evidence three letters, Exhibit 73 for identification, 74 for identification, and 75 for identification, already marked. 6025

HEARING ADJOURNED SUBJECT TO CALL. 6026

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## UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

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|---|---|
| UNITED STATES OF AMERICA, Petitioner, AGAINST PRINCE LINE, *et al.*, Defendants. | In Equity No. 9201. 6027 |

Before—SAMUEL M. HITCHCOCK, Esq.,
*Special Examiner.*

I, SAMUEL M. HITCHCOCK, the Examiner appointed by order of this Court to take proofs on behalf of the Petitioner and the Defendants in the above entitled cause,

DO HEREBY CERTIFY that I have been attended by counsel for Petitioner and by the witnesses produced on its behalf, and by counsel for the respective defendants; that the witnesses were duly cautioned and sworn by me and their testimony taken stenographically by Charles P. Hanson and thereafter reduced to typewriting; that the foregoing is said testimony and all of it; that the signature of the said witnesses to their testimony was waived. 6028

That I am not of counsel for either party or in any wise interested in the event.

Dated, New York, October 28th, 1913.

SAMUEL M. HITCHCOCK.

6029 NEW YORK, December 29, 1913.

Hearing resumed pursuant to adjournment.

APPEARANCES:

STANLEY D. MONTGOMERY, Esq., for the Petitioner.
MESSRS. BURLINGHAM, MONTGOMERY & BEECHER; by Charles Burlingham, Esq., for Frederick T. Busk, *et al.*
MESSRS. CONVERS & KIRLIN; by Mr. M. W. Maclay, Jr., for Prince Line, *et al.*

6030

WILLIAM LOWRY, recalled.

DIRECT EXAMINATION by Mr. Montgomery.

Q. Captain Lowry, have you prepared a statement showing the arrivals of coffee at New Orleans from Brazil? A. I have.

Q. And for what period or periods of time? A. For each crop year beginning July 1st, 1908, down to and including June 30th, 1912.

6031

Q. I show you this statement and ask you if that is a part of that compilation? A. It is; it is the statement covering the first year from July 1st, 1908, to June 30th, 1909.

Q. And showing the vessels arriving at New Orleans with coffee during that period, does it? A. It does.

Q. And the lines to which those boats belong, if they do belong to lines? A. When they belong to lines it shows the lines to which they belong, with the exception of the Lloyd Brazileiro, which I included in the outside steamers.

6032

Q. And from what source did you obtain the information as to the quantity of coffee which this statement shows the steamers carried? A. From the daily reports of the New York Coffee Exchange.

MR. MONTGOMERY: I offer in evidence this statement for the period from July 1st, 1908, to June 30th, 1909, inclusive.

It is stipulated that this may be received in evidence without objection to its competency, relevancy or materiality, but with the right upon the part of the defendants, or

any of them, at any time to attack the accuracy of the statement. 6033

Marked Petitioner's Exhibit 342.

Q. These papers for the period from July 1st, 1909, to June 30th, 1910, and from July 1st, 1910, to June 30th, 1911, and from July 1st, 1911, to June 30th, 1912, were also made by you, were they not? A. They were from the same sources of information as the preceding one.

MR. MONTGOMERY: I offer those in evidence with the same stipulation. 6034

Marked Petitioner's Exhibits 342A, 342B, 342C.

Q. This statement entitled "Arrivals of coffee at New Orleans from Brazil for the four years (crop periods) July 1st, 1908, to June 30th, 1912, inclusive," is that a statement prepared by you? A. It is. This is a consolidation of the statements which have been just offered.

MR. MONTGOMERY: I offer that in evidence, subject to the same stipulation.

Marked Petitioner's Exhibit 343. 6035

MR. MONTGOMERY: I understand, Mr. Burlingham, that you are willing to admit that all of the steamers classified in these Exhibits 342, 342A, 342B and 342C as belonging to the Lamport & Holt Line were actually sailed to New Orleans by the Lamport & Holt Line on the dates named?

MR. BURLINGHAM: I understand, Mr. Montgomery, that all the ships on these Exhibits 342, 342A, 342B and 342C with which you charge the Lamport & Holt Line were mentioned on the list which you previously submitted to us to have checked up? 6036

MR. MONTGOMERY: That is correct.

MR. BURLINGHAM: And that there are no other ships on the list with which the Lamport & Holt Line is charged which were not on the list previously submitted to us?

MR. MONTGOMERY: That is correct.

MR. BURLINGHAM: Then we concede that the ships with which the Lamport & Holt Line is charged on these Exhibits were operated for the account of the Lamport & Holt Line as stated.

6037 MR. MONTGOMERY: Now, Mr. Maclay, I understand that you are prepared to admit that all of the ships which these Exhibits 342, 342A, 342B, and 342C stated were sailed by the Prince Line were actually sailed by the Prince Line with the exception of the steamship *Sahara,* which arrived at New Orleans according to this statement on January 11th, 1910?

MR. MACLAY: Concede that, under the same understanding with respect to the previous list that Mr.
6038 Burlingham just referred to.

MR. MONTGOMERY: That is the same list of which you have a copy.

Q. Captain Lowry, where did you get your information in regard to the steamship *Sahara?* A. From the Collector of Customs in New Orleans, who wrote stating that this vessel had been entered by the firm of Warrener & Company, who are agents of the Prince Line in New Orleans.

Q. Is this the letter (showing paper to witness)? A. That
6039 is the letter.

Q. Is this a copy of your letter to the Collector at New Orleans in regard to these steamers? A. (After showing witness paper.) It is.

MR. MONTGOMERY: Then I offer copy of the letter to the Collector and the original reply of the Collector in evidence.

Marked Petitioner's Exhibits 344 and 345.

Q. Did you make any other effort to verify this state-
6040 ment to the effect that the *Sahara* was a Prince Line boat? A. I did.

Q. What was that? A. I indentified the ownership through Lloyd's Register, and I wrote the senior partner of the firm that owned the ship.

Q. What firm was that? A. Maclay & McIntyre, Glasgow.

Q. Is that a copy of your letter to Maclay & McIntyre? (Showing witness paper.) A. It is.

Q. Did you receive a reply to that, and is this it? (Handing witness paper.) A. I did. That is the reply.

MR. MONTGOMERY: I offer these in evidence.

Marked Petitioner's Exhibits 346 and 347.

Q. I think you have identified the steamers belonging to 6041
the Lamport & Holt and Prince Lines fully. Now, how do you get your information in regard to the outside steamers? You classified them all, didn't you, as outside steamers? A. I classified all other steamers as outside steamers except certain steamers which arrived in New Orleans with coffee which was transshipped either from Europe or New York.

Q. And as to those steamers, how did you get that information? A. From the records; from the daily reports of the New York Coffee Exchange. 6042

Q. The Coffee Exchange reports classify separately the steamers arriving at New Orleans with coffee that has been sent from Brazil to Europe and transshipped to New Orleans? A. It does.

Q. And also the coastwise steamers; that would be a transshipment from New York, would it not? A. They would show transshipped from the steamer arriving in New York to the coasting steamer going to New Orleans.

Q. And the sailing vessels are always separately listed, where they occurred in the Coffee Exchange report? A. 6043
If there are any.

Q. Is there anything else about these exhibits which would require explanation? A. I don't think so.

No Cross-Examination.

James H. Waddell recalled.

Direct Examination by Mr. Montgomery:

Q. Mr. Waddell, have you at my request looked up the 6044
steamship *Sahara* arriving at New Orleans on January 10th or thereabouts, 1910, to ascertain what line that boat belonged to? A. I have.

Q. Or who it was sailed by? A. I have, yes.

Q. You shipped some coffee by that steamer, did you not, Mr. Waddell? A. Yes.

Q. About 9,000 bags? A. 9,081 bags.

Q. To whom did you pay the freight? A. Our New Orleans house paid the freight to M. & R. Warrener, agents of the steamship *Sahara*.

6045 Q. Are they also the agents of the Prince Line there, do you know? A. That I do not know.

Q. Do your records show whether or not you collected any rebates on that freight which you paid on that coffee? A. Yes; we collected rebates. We did not, but our London house collected rebate on the 28th of December, 1910, from the Prince Line, £883 one penny.

Q. For that coffee? A. That 9,081 was included in a total of 117,238 bags.

Q. And your records show, do they, that that is the iden-
6046 tical 9,081 bags shipped by the steamer *Sahara?* A. Yes, sir.

Cross-Examination by Mr. Maclay:

Q. Mr. Waddell, how do you know about collecting of this rebate; do you know anything about that of your own knowledge? A. Only from the report that I received from our London house in the accounts that they render us.

Q. I believe you said that you paid the freight to M. & R. Warrener? A. Yes.

6047 Q. Do you know to whom the check was made out, or the draft, or whatever it was? A. According to the records received from New Orleans the entry is made paid M. & R. Warrener, agents steamship *Sahara,* freight on so many bags of coffee.

Q. Do you know of your own knowledge whether or not this freight was paid to the Prince Line at all? A. Of my own knowledge, no.

Re-Direct Examination by Mr. Montgomery:

6048 Q. Mr. Waddell, throughout the entire year of 1910 you were observing your arrangements with the conference lines not to ship by any outside steamers at all, were you not? A. We were, yes.

Q. And all rebates which you have collected have been conditioned upon your confining all of your shipments to the conference lines? A. That was the understanding.

Q. And your records clearly show you shipped this 9,081 bags on the *Sahara?* A. Yes.

Q. And collected a rebate from the Prince Line? A. According to the records, yes.

Q. So that under the terms of your contract or your

arrangement with the conference lines you would not have been able to collect that rebate on the *Sahara* or on any other boat if you had shipped by an outsider? 6049

MR. BURLINGHAM: That is objected to as calling for a conclusion.

A. No.

By Mr. Maclay:

Q. These records which you referred to would show that this rebate was paid on those 9,081 bags? A. Yes. 6050

Q. What records do you refer to? Are those in your office here? A. Yes. The advices that we received from our London house, and entries are put through our books here accordingly.

Hearing adjourned subject to call.

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6053 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Before—SAMUEL M. HITCHCOCK, Esq.,
Special Examiner.

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>Petitioner,<br>6054<br>AGAINST<br>PRINCE LINE, LIMITED, *et al.*,<br>Defendants. | In Equity<br>No. 9201 |

I, SAMUEL M. HITCHCOCK, the Examiner appointed by order of this Court to take proofs on behalf of the Petitioner and the Defendants in the above entitled cause,

6055 DO HEREBY CERTIFY that I have been attended by counsel for Petitioner and by the witnesses produced on its behalf, and by counsel for the respective defendants; that the witnesses were duly cautioned and sworn by me and their testimony taken stenographically by Charles P. Hanson and thereafter reduced to typewriting; that the foregoing is said testimony and all of it; that the signature of the said witnesses to their testimony was waived.

That I am not of counsel for either party or in any wise interested in the event.

6056 Dated, New York, January 13, 1914.

SAML. M. HITCHCOCK,
Special Examiner.